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In The
Supreme Court of the United States

October Term, 1995

No.

DAVID PIERCE, et al.

Petitioner,

vs.

IOWA-MISSOURI CONFERENCE OF SEVENTH-DAY ADVENTISTS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA

PETITION FOR A WRIT OF CERTIORARI

LaMARCA & LANDRY, P.C.

Robert K. DuPuy
1300-50th Street, Ste. 104
West Des Moines, IA 50266
(515) 225-2600

COUNSEL FOR PETITIONER

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QUESTION PRESENTED FOR REVIEW

1. Did the Supreme Court of Iowa err in holding that a church's employment contract with a minister may be breached, and the employee denied review in a civil court, because under the Free Exercise Clause, compulsory deference must be given to all of the church's actions regarding its clergy, leaving the court without jurisdiction?

PARTIES

Plaintiffs: David Pierce; Mary Pierce, his wife; and Melanie Pierce, Jason Pierce and Nathaniel Pierce, their children.

Defendant: Iowa-Missouri Conference of Seventh-day Adventists

Parent Organizations:

a. Mid-American Union Conference of Seventh-day Adventists;

b. North American Division of Seventh-day Adventists; and

c. General Conference of Seventh-day Adventists

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1. Iowa District Court for Polk County, Ruling on Summary Judgment, dated March 14, 1994 10a

2. Iowa District Court for Polk County, Ruling on Motion to Reconsider, dated June 2, 1994 20a

3. Supreme Court of Iowa, Decision on Appeal, July 19, 1995 1a

4. Supreme Court of Iowa, Ruling on Petition for Rehearing, September 15, 1995 22a

JURISDICTION

The Supreme Court of Iowa affirmed the ruling of the Iowa District Court by Opinion dated July 19, 1995. A Petition for Rehearing was timely filed and denied by Order dated September 15, 1995. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." First Amendment.

STATEMENT OF THE CASE

The Seventh-day Adventist Church is a worldwide ecclesiastical corporation organized into a hierarchial structure. The Iowa-Missouri Conference is part of the Mid-American Union Conference, which in turn is part of the North American Division of the General Conference. App. p. 3a. The *"Working Policy of the North American Division of the General Conference"* provides the policies and guidelines for the churches it oversees. Pursuant to the *Working Policy,* each local conference is to elect an Executive Committee. The bylaws enable the Executive Committee to hire ministers. App. p. 3a.

On February 26, 1985, the Executive Committee of the Iowa-Missouri Conference voted to hire David

Pierce as a ministerial intern (licensed minister) upon receipt of his bachelor's degree in theology. Pierce was a pastor and associate pastor in several churches in the state of Missouri. App. p. 3a. On February 21, 1990, the Executive Committee voted to terminate Pierce's employment. This was done without counseling or giving Pierce an opportunity to correct any perceived deficiencies in his ministry. App. p. 4a. Pierce unsuccessfully challenged his termination before the Executive Committee. Id.

The North American Division Working Policy "D" on "Employees - Accrediting, Transferring, Employment Regulations," which specifically includes "licensed ministers," provides that :

> the effectiveness of all employees is to be reviewed periodically. Where employees are found to be ineffective, counsel should be given them and if necessary they should be given other lines of work or be advised to seek employment outside of the denomination.

App. p. 24a-25a. Discussing the operation of church employment policies in the church's official publication, The Adventist Review, of December 1, 1988, Warren Banfield, Director of the Office of Human Relations of

the General Conference of Seventh-day Adventists stated that:

> according to General Conference policy, if a[n employee] has a problem and the supervisor is dissatisfied with his or her performance, the supervisor must document his efforts to persuade the person to perform adequately. If this is not done and all of a sudden he decides to dismiss that employee, the person may decide to take legal action.

App. p. 34a-35a. Regarding such mandatory documentation, Banfield explained its role in the type of legal action he was discussing.

> Authorities may ask to review the individual's personnel file and review the job description. They want to know also if we are in compliance with our church policies.

App. p. 35a. Banfield's interviewer asked: "There is an assumption that with separation of church and state, the church is not accountable to the state in these matters." Banfield replied:

> For a long time many church leaders felt that because we are a church, we are exempt from federal and state laws in the way we run our organization. But the guidelines that apply to any business or organization apply to the church. When it comes to our doctrines, our practice, our beliefs, we have a free hand . . . but fairness in employment is another matter.

App. p. 35a. The personnel file of David Pierce does not contain a single reference of any kind to any problems or deficiencies in the ministerial performance of David Pierce nor to any periodic or annual evaluations of David Pierce's performance or any reference to counseling in order to help him improve his performance, or warning him of termination. The Executive Committee, attempted to get its officers to comply with church policy in the final months of David Pierce's employment. As reflected in the minutes of the Executive Committee dated January 18, 1990, after the officers raised questions about "the effectiveness of David Pierce's leadership . . . and his future in the ministry in general," the Committee voted to require "the Conference officers to visit with David Pierce and report back to the Executive Committee before making a final determination." App. p. 38a. The officers did not obey

the directive of the Executive Committee to visit with Pierce; they fired him without warning in early 1990.

For many years the working policies of the North American Division contained a specific provision prohibiting church employees from taking legal action against the church in employment disputes. Beginning in 1989, that provision was deleted. Cf. App. p. 40a and 42a.

Pierce, his wife and children brought this action against the Iowa-Missouri Conference. He challenged his termination upon legal theories arising from breach of a unilateral employment contract. App. p. 4a.

The Church filed a motion for summary judgment. It argued the Free Exercise Clause of the First Amendment precluded the court from exercising authority over this dispute. The court agreed, granted the motion, and also denied Pierce's Iowa Rule of Civil Procedure 179(b) motion to reconsider. Pierce appealed. App. p. 4a. The Supreme Court of Iowa affirmed the district court's ruling on July 19, 1995. App. p. 8a-9a.

Summary of Argument

The decision of the Iowa Supreme Court, apparently applying a compulsory deference standard to

all actions of a church relating to ministerial employment, conflicts with this court's rejection of such a standard in favor of a neutral principles of law analysis. At the very least, the question, which at least in Iowa was one of first impression, is unsettled.

The decision of the Iowa Supreme Court is also in conflict with the United States Court of Appeals for the Eighth Circuit. The Eighth Circuit has recently recognized jurisdiction of a clergy employment dispute, endorsed the neutral principles of law approach, and rejected a compulsory deference standard.

The circuit courts themselves are sharply divided on the question presented in this case, the First, Fourth, Fifth and Sixth Circuits leaning toward a compulsory deference standard, and the District of Columbia, Seventh, Eighth and Eleventh Circuits leaning toward the neutral principles of law approach.

REASONS FOR GRANTING THE WRIT

I

THE IOWA SUPREME COURT ERRED IN APPLYING A COMPULSORY DEFERENCE STANDARD INSTEAD OF THIS COURT'S NEUTRAL PRINCIPLES OF LAW ANALYSIS.

Iowa law recognizes a wrongful termination action, an exception to the employment-at-will doctrine, based upon the provisions of an employee manual or handbook which may, under appropriate facts, be con-

sidered a unilateral contract of employment. Fogel v. Trustees of Iowa College, 446 N.W.2d 451, 455 (Iowa 1989) ("an at-will employee discharged in violation of [a] policy manual may maintain a breach of contract action against an employer.") Termination for cause or without just cause is not an element of the cause of action; and termination with just cause is not a defense, nor does termination without cause establish any element.

It is clear, therefore, that the violation of a policy handbook provision, which requires counseling or warning, and documentation in the employee's personnel file can be established by an empty personnel file without any inquiry, whatsoever, into the reasons for termination of its "rightness" or "wrongness." The Seventh-day Adventist Church has such a policy manual provision, *Working Policy* D 6010.

The policy was not followed by the Iowa-Missouri Conference of Seventh-day Adventists in terminating David Pierce. Based upon an undisputed record, the Iowa Supreme Court made a factual finding that Pierce's termination "was done without counseling or giving Pierce an opportunity to correct any perceived deficiencies in his ministry." App. p. 4a. *The Iowa Supreme Court, obviously, reached this factual conclusion - that the church's own policy had not been followed - without any inquiry into the doctrines of the Seventh-day Adventist Church, the qualifications of an Adventist minister, or the alleged deficiencies in David*

Pierce's ministry. Yet the Iowa Supreme Court upheld the District Court's conclusion that any such inquiry, no matter how "non-religious" it in fact was, constitutes excessive interference with the church's free exercise of religion.

Church Human Relations Director Warren Banfield, by contrast, has stated that:

> authorities may ask to review the individual's personnel file and review the job description. *They want to know also if we are in compliance with our church's policies.*

App. p. 35 (emphasis added). The contention that no public or secular authority can properly review church employment policies is not a religious doctrine but a litigation strategy.

> Guidelines that apply to any business or organization apply to the church. When it comes to our doctrines, our practice, our beliefs, we have a free hand . . . *But fairness in employment is another matter.*

App. p. 35a (emphasis supplied), Banfield explained.

II

THIS COURT'S PRECEDENTS DO NOT SUPPORT THE CLAIMS OF DEFENDANT CHURCH NOR THE HOLDING OF THE IOWA SUPREME COURT.

This Court's most-cited case on this issue is Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Although the defrocking of a bishop was one of the issues considered in Milivojevich, the essence of the case was control of the church, its property, and its assets; the bishop controlled a church monastery and was the principal officer of the church's property-holding corporations. Id. at 698, 669. Bishop Dionisije, a controversial figure, was the subject of numerous complaints challenging his fitness to serve as bishop and his administration of the diocese. Id. at 702. Ultimately, a delegation of the Mother Church was sent to the diocese to investigate the complaints. Id. at 702-03. Subsequently, the Holy Synod suspended Dionisije pending disposition of the complaints. The Holy Assembly, meanwhile, reorganized the diocese into three new dioceses. Id. at 703. Bishop Dionisije openly defied the Mother Church, refusing to recognize its authority over him and declared the diocese completely autonomous from the Mother Church. Id. at 704-06. Meanwhile, the Holy Synod formally indicted Dionisije on charges of ecclesiastical misconduct and divested him of his episcopal and monastic ranks. Id. at 706.

Even given the rather unique facts of Milivojevich, this Court did not announce any rule of compulsory deference to all that is done by a church, even with regard to its clergy. This Court dealt with the narrow issue of whether secular courts could reject:

> the decisions of the highest ecclesiastical tribunals of this hierarchial church upon the issues in dispute, and impermissibly substitute [ ] its own inquiry into church polity and resolutions based thereon of those disputes.

Id. at 708. Answering the question this Court stated that:

> *Where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity,* . . . civil courts [must accept] the decisions of the highest ecclesiastical tribunal . . . as binding on them *in their application to the religious issues of doctrine or polity before them.*

Id. at 709 (quoting Md. and Va. Churches v. Sharpsburg Church, 396 U.S. 367, 369 (1970) (Brennan, J. concurring) (emphasis supplied)). This Court thus limited its holding that civil courts must defer to church authority in settling disputes only to situations requiring "extensive inquiry . . . into religious law and polity" to determine "religious issues of doctrine or polity." Applying this principle, the Court concluded that since the case essentially turned on the church's right to defrock the bishop, the case was not a property dispute, but a religious one in which the civil court had been asked to determine which of two bishops, appointed by rival church factions, was to be the "real" bishop of the church, based upon disputed interpretations, by the rival factions, of religious law and doctrine. Id. at 709, 718-21. The Court continued to emphasize, however, that its decision applied only to "matters of purely ecclesiastical concerns," Id. at 710, "all cases of ecclesiastical cognizance," Id. at 711, and "matters purely ecclesiastical." Id. at 711, 12. The Court defined a "purely ecclesiastical" dispute as:

> A matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standards of morals required of them.

Id. at 713-14 (quoting Watson v. Jones, 13 Wall. 679, 733 (1872)).

Perhaps concerned that the Court's opinion could be misconstrued into a per se rule of compulsory deference to a church's evaluation of its own authority, Justice White concurred separately to clarify that questions, such as whether the church was, in fact, hierarchial, and whether the diocese was, in fact, a part of the church, were:

> basic issues . . . for the court's ultimate decision, and the fact that church authorities may render their opinions on them does not foreclose the courts from coming to their independent judgment.

Id. at 725 (White, J. concurring). In a vigorous dissent, Justice Rehnquist, joined by Justice Stevens, explained that even a rule that:

> a civil court must accept the ecclesiastical decisions of church tribunals as it finds them . . . requires that proof be made as to what these decisions are, and if proofs on that issue conflict, the civil court will inevitably have to

> choose one over the other. In so choosing, if the choice is to be a rational one, reasons must be adduced as to why one proffered decision is to prevail over another.

Id. at 726. (Rehnquist, J. dissenting). Justice Rehnquist specifically rejected the per se rule of compulsory deference to "official" church authority, argued for in this case. Using a hypothetical "Holy Assembly" of one hundred members with a rule requiring a majority vote of a minimum quorum of forty to defrock a bishop, which was actually only attended by thirty members, sixteen voting to defrock the bishop, Justice Rehnquist asked if that vote would be binding on a civil court:

> If the civil courts are to be bound by any sheet of parchment bearing the ecclesiastical seal and purporting to be a decision of a church court they can easily be converted into handmaidens of arbitrary lawlessness.

Id. at 727. Justice Rehnquist argued for the "application of neutral principles of law consistent with the decisions of this court" and rejected the notion that either the Illinois courts or the Supreme Court "should have deferred entirely to the representations of the an-

nounced representatives of the Mother Church." Id. at 734.

> Such blind deference, however, is counselled neither by logic nor by the First Amendment. To make available the coercive powers of civil courts to rubber-stamp ecclesiastical decisions of hierarchial religious associations, when such deference is not accorded similar acts of secular voluntary associations would, in avoiding the free exercise problems . . . create far more serious problems under the Establishment Clause.

Id. In Jones v. Wolf, 443 U.S. 595 (1979), the issues were more specifically related to church property disposition following a schism, and lacked the personal element of the defrocked bishop in Milivojevich. This Court approved a "neutral principles of law" analysis to aid in the interpretation of both legal and even church documents to determine property disputes within churches. Id. at 602-03. Writing for the majority, Justice Blackmun, acknowledging that the neutral principles approach would, on occasion, require a civil court to examine religious documents, suggested that a civil court could review such documents "in

purely secular terms [not] rely[ing] on religious precepts" and, if the necessity to resolve a genuinely religious controversy arose, "then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body." Id. at 604.

Justice Blackmun characterized the rule favored by the dissenters as one of "compulsory deference to religious authority . . . even when no issue of doctrinal controversy is involved." Id. at 605. The majority argued that a compulsory deference rule could, in fact, lead to an even more searching, impermissible inquiry into ecclesiastical matters. On the other hand, argued the majority:

> [t]he neutral-principles approach cannot be said to "inhibit" the free exercise of religion any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods.

Id. at 606. The "neutral-principles analysis," explained the Court, "shares the peculiar genius of private-law systems in general-flexibility in ordering private rights and obligations to reflect the intentions of the parties" by plainly stating on the face of church documents the parties' rights and duties. Id. at 603-04, 606.

III

THE CIRCUIT COURTS OF APPEAL ARE DIVIDED BETWEEN THE COMPULSORY DEFERENCE RULE AND THE NEUTRAL PRINCIPLES OF LAW APPROACH.

In seeking to apply the principles of Milivojevich and Jones to cases involving clergy employment disputes, the Circuit Courts of Appeal have sharply divided, largely along the lines of the neutral-principles approach and the compulsory deference rule.

A. Compulsory Deference

The First Circuit, in a minister's wrongful termination case, Natal v. Christian and Missionary Alliance, 878 F.2d 1575 (1st Cir. 1989), appears to have applied a rule of compulsory deference in upholding a rule 12(b)(6) dismissal of the plaintiff's complaint. Few facts are noted in the opinion which summarily states that:

> at bottom, Natal's complaint directly involves, and would require judicial intrusion into, rules, policies, and decisions which are unmistakably of ecclesiastical cognizance.

Id. The Natal Court did not consider the plaintiff's claim that the church "failed to follow its own rules" to

be "the substance" of the complaint, which, in the court's opinion, would require a "probe into a religious body's selection and retention of clergymen" prohibited by the First Amendment because "[m]atters touching this relationship [between an organized church and its ministers] must necessarily be recognized as a prime ecclesiastical concern." Id. (quoting McClure v. Salvation Army, 460 F.2d 553, 558-59 (5th Cir. 1972)).

In the McClure case, the Fifth Circuit held that Title VII of the Civil Rights Act did not apply to the Salvation Army's employment of its ministers, and the plaintiff's complaints about the church's alleged discriminatory pay scale for women did not fall within the jurisdiction of the federal courts. McClure, 460 F.2d at 560. The court held that practices found unlawful by the Equal Employment Opportunity Commission were:

> matters of church administration and government [and] an investigation and review of these practices . . . would, as a result, cause the state to intrude upon matters of church administration and government.

Id. See also: Simpson v. Wells Lamont Corp., 494 F.2d 490 (5th Cir. 1974).

In Lewis v. Seventh-day Adventists Lake Region Conference, 978 F.2d 940 (6th Cir. 1992), the Sixth Circuit applied the compulsory deference rule

> to conclude that the First Amendment bars civil courts from reviewing decisions of religious judicatory bodies relating to the employment of clergy. Even when, as here, the plaintiff alleges that the religious tribunal's decision was based on misapplication of its own procedures and laws, the civil courts may not intervene.

Id. at 942-43 See also: Hutchinson v. Thomas, 789 F.2d 392 (6th Cir. 1986).

While arguably applying the compulsory deference rule, the Fourth Circuit, in Rayburn v. General Conference of Seventh-day Adventists, 772 F.2d 1164 (4th Cir. 1985), made certain significant factual and legal distinctions. The court explained its narrow, fact-based holding as "the constitution requires that civil authorities decline to review either the *procedures for selection or the qualifications* of those chosen or rejected." Id. at 1172 (emphasis supplied).

Notably, however, the Rayburn Court limited the church's immunity from civil scrutiny of its employment practices to situations "where the values of state and church clash or where there is a differing emphasis among priorities or as to means in an employment decision of a theological nature." Id. at 1171. The court also noted, significantly, in its discussion of the church's employment practices:

> Of course, churches are not - and should not be - above the law. Like any other person or organization, they may be held liable for their torts and upon their valid contracts.

Id.

B. Neutral Principles of Law

The District of Columbia Circuit cited with approval this Court's adoption of the neutral principles test in Jones v. Wolf, applying it in a clergy employment case in Minker v. Baltimore Annual Conference of United Methodist Church, 894 F.2d 2354 (D.C. Cir. 1990). Minker had brought claims under the Age Discrimination in Employment Act, and under common law contract principles. Judge Mikva's thoughtful opinion included review of certain portions of the Methodist Book of Discipline, "The Book of the Law of the United Methodist Church," concerning the assignment of pastorships. Id. at 1355-56. The court based

its review of the Book of Discipline on Jones v. Wolf, noting that:

> not *all* provisions of the religious constitution are immune from civil court interpretation [under the neutral principles test] which permits a court to interpret provisions of religious documents involving property rights and other non-doctrinal matters, so long as the analysis can be done in purely secular terms.

Id. at 1358 (emphasis in original). The court found that the Book of Discipline listed several factors to be taken into account in pastoral appointments, including not only age, but the "gifts and graces" of a particular pastor. Id. at 1356. This language was sufficient for the Minker Court to reject the plaintiff's ADEA claim and one contract theory arising out of the Book of Discipline, the court declining to attempt to parse the church's employment decision to determine if Minker's age, or his "gifts and graces," a purely ecclesiastical subjective judgment, was the actual source of the employment decisions affecting him. Id. at 1357, 1359.

Significant for this case, however, the Minker Court reversed the district court on the dismissal of

Minker's claim of an oral contract by his district superintendent promising to provide Minker with "a congregation more suited to his training and skills in exchange for his continued work at his present assignment." Id. at 1359-61. "A church is always free to burden its activities voluntarily through contracts, and such contracts are fully enforceable in civil court," stated the court, noting that:

> In Jones v. Wolf, . . . the Supreme Court specified that courts may always resolve contracts governing "the manner in which churches own property, hire employees, or purchase goods" . . . even cases that rejected ministers' discrimination claims have noted that churches nonetheless (may be held liable upon their valid contracts.)

Id. at 1359 (quoting Jones, 80 U.S. at 606; Rayburn, 772 F.2d at 1171).

The court acknowledged "that the contract alleged by Minker threatens to touch the core of the rights protected by the free exercise clause," and agreed "that any inquiry into the church's reasons for asserting that Minker was not suited for a particular pastorship would constitute an excessive entanglement

in its affairs," but stated that "nevertheless, the First Amendment does not immunize the church from all temporal claims made against it." Noting that the case had been the victim of summary disposition in the lower court, Judge Mikva instructed that:

> Appellant should be allowed to demonstrate that he can prove his case without resorting to impermissible avenues of discovery or remedies. As a theoretical matter, the issue of breach of contract can be adduced by a fairly direct inquiry into whether Appellant's superintendent promised him a more suitable congregation, whether Appellant gave consideration in exchange for that promise, and whether such congregations became available but were not offered.

Id. at 1360. The court expressed confidence in the district court's ability to prevent any impermissible inquiry into ecclesiastical matters, noting that:

> it may turn out that the potentially mischievous aspects of Minker's claim are not con-

> tested by the church or are subject to entirely neutral methods of proof.

Id. In summary, stated the court:

> while the First Amendment forecloses any inquiry into the church's assessment of Minker's suitability for a pastorship, even for the purpose of showing it to be pretextural, it does not prevent the district court from determining whether the contract alleged by Minker, . . . exists.

Id. at 1360-61. Addressing the entanglement concerns of the church, the Minker Court explained that:

> Minker's injury can be remedied without court oversight. . . . maintaining a suit, by itself, will not necessarily create an excessive entanglement.

Id. at 1360. The District of Columbia Circuit's thoughtful conclusion to Minker was that:

> The First Amendment does not afford defenses against

> promises made and contracts formed. A church, like any other employer, is bound to perform its promissory obligations in accord with contract law. Pastor Minker is entitled to rely upon his employer's representations and to enforce them in a secular court. It is possible that the First Amendment's prohibition against proceedings that would create excessive entanglements with religious beliefs will make Appellant's task at trial more difficult. But these difficulties do not eliminate Appellant's right to enforce his employment contract.

Id. at 1361. In a passage particularly apropos to this case, the Minker Court stated:

> We see no potential for distortion of church appointment decisions from requiring that the church not make empty, misleading promises to its clergy.

Id. at 1360.

Similarly, in Drevlow v. Lutheran Church, Missouri Synod, 991 F.2d 468 (8th Cir. 1993), the Eighth Circuit Court of Appeals refused to recognize any compulsory deference rule, and, applying a neutral-principles analysis instead, held that while a minister's complaint based upon the removal of his name from the church's list of eligible ministers would involve impermissible scrutiny of the church's interpretation of Drevlow's ministerial qualifications, but reversed the judgment of the lower court dismissing Drevlow's additional claims for libel, negligence, and intentional interference with legitimate expectation of employment. Id. at 470-72.

The Eighth Circuit explained that although "personnel decisions are protected from civil court interference where review by civil courts would require the courts to interpret and apply religious doctrine or ecclesiastical law," Id. at 471:

> the First Amendment does not shield employment decisions made by religious organizations from civil court review, however where the employment decisions do not implicate religious beliefs, procedures, or law.

Id. Like the Minker Court, the Eighth Circuit in Drevlow saw a civil court as the appropriate forum for the review of evidence to determine if, in fact, Drevlow's claims constituted "an impermissible inquiry into the Synod's bylaws or religious beliefs." The court noted that:

> The Synod has not offered any religious explanation for its actions which might entangle the court in a religious controversy in violation of the First Amendment. Drevlow is entitled to an opportunity to prove his secular allegations at trial.

Id. Once again, the district court was considered, by the Eighth Circuit, to be a proper and capable gatekeeper against impermissible religious inquiries:

> It is incumbent upon the court to limit the evidence at trial in order to avoid determining religious controversies. If further proceedings reveal that this matter cannot be resolved without interpreting religious procedures or beliefs, the district court should reconsider the Synod's motion to dismiss.

Id. at 472. Significantly, the Drevlow Court signalled its unwillingness to allow a church to merely state, without proof, that religious beliefs are the foundation of particular employment practices. The court stated that "while the district court cannot constitutionally decide the validity of these beliefs . . . the court may properly determine their existence." Id. n. 3.

Although it is not an employment case, Crowder v. Southern Baptist Convention, 828 F.2d 718 (11th Cir. 1987) places the Eleventh Circuit in the group that has rejected a compulsory deference rule in favor of this Court's neutral-principles approach to adjudicating disputes within religious organizations. Carefully reviewing the precedents, the Eleventh Circuit noted that this Court:

> has also rejected an absolute rule that civil courts are powerless to resolve any church property dispute [and has] attempted to strike an appropriate balance between the establishment and free exercise concerns implicated when a court is asked to resolve an ecclesiastical dispute.

Id. at 721. The Crowder Court cited, with approval, the neutral principles of law approach of Jones v. Wolf for resolving disputes without deciding questions of re-

ligious belief or doctrine, and Jones v. Wolf's rejection of the rule of compulsory deference to religious authority, as actually creating "a greater risk of excessive government entanglement in religion than the neutral principles approach." Id. at 722-23. The court concluded that the appropriate course was not one of compulsory deference, but one of balancing

> First Amendment considerations favoring civil court noninvolvement [against] state interests in resolving disputes concerning rights of property and the individual interests in adjudicating before a civil court forum.

Id. at 725.

In Dausch v. Rykse, 52 F.3d 1425 (7th Cir. 1994), a case about clergy sexual abuse, while noting that many courts had refused to recognize clergy malpractice claims because of reluctance to examine the pastoral activity of members of the clergy when such a judicial inquiry would require examination and evaluation of the clergy's adherence to the tenets of his or her faith or of internal decisions and organization of the church, the Dausch Court noted that the reluctance had not been extended to situations in which the conduct in question does not bear a direct relationship to the doctrinal or organizational aspects of religious

practice. Id. at 1432. Quoting Wisconsin v. Yoder, 406 U.S. 205, 215 (1972), the Court explained:

> A way of life, however virtuous and admirable, may not be interposed as a barrier to a reasonable state regulation . . . if it is based on purely secular considerations; to have the protection of the religion clauses, the claims must be rooted in religious belief.

Id. at 1432. The court stated that such activity can be proscribed by a legitimate regulation of general applicability designed to protect the health, safety, or good morals of the community and that, despite Illinois' rejection of clergy malpractice claims:

> Illinois allows judicial scrutiny of this latter type of conduct because it does not implicate judicial assessment of the tenets of a particular religion or a determination of whether a particular litigant has adhered to those tenets. Rather the sole inquiry is whether the individual has engaged in conduct that the state has deemed harmful.

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Id. Indeed, noted the court, a great deal of the activity of religious institutions may be motivated by the tenets of the religion, but evaluation of that activity does not require that those religious tenets be assessed by the civil courts. Id. at 1433.

CONCLUSION

Since the decision of the Iowa Supreme Court is in conflict with the precedents of this Court, and since the Circuit Courts of Appeal are sharply divided in their application of this Court's precedents, this Court should grant Petitioners' Petition for Writ of Certiorari to resolve issues regarding constitutional applications and the state of the law as implicated in this case.

LaMARCA & LANDRY, P.C.

Robert K. DuPuy

By_____
Robert K. DuPuy PK 0008928

1300 50th Street
West Des Moines, Iowa 50266
Telephone: (515) 225-2600

ATTORNEYS FOR PETITIONERS

APPENDIX A

IN THE SUPREME COURT OF IOWA

No. 190/94-623

Filed July 19, 1995

DAVID PIERCE, Individually and as Next Friend of MELANIE PIERCE, JASON PIERCE and NATHANIEL PIERCE, and MARY PIERCE, Individually,

Appellants

vs.

IOWA-MISSOURI CONFERENCE OF SEVENTH-DAY ADVENTISTS,

Appellee.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge

Minister challenges order granting Church's motion for summary judgment in wrongful termination action. **AFFIRMED.**

Robert K. DuPuy of LaMarca & Landry, P.C., West Des Moines, for appellant.

James H. Kizziar, Jr. and John A. Ferguson, Jr. of Matthews & Branscomb, P.C., San Antonio, Texas, and Brian L. Campbell of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellee.

Considered by McGiverin, C.J., and Larson, Carter, Lavorato, and Neuman, JJ.

PER CURIAM.

I. *Introduction.*

This case concerns the termination of David Pierce's employment as a ministerial intern of the Iowa-Missouri Conference of Seventh-Day Adventists. Pierce, his wife and his children brought suit against the Church on several theories, including the breach of a unilateral contract of employment. The district court granted the Church's motion for summary judgment. It determined the free exercise clause of the First Amendment, made applicable to the states through the Fourteenth Amendment, precluded it from addressing any issues related to the Church's policies, procedures or actions in terminating Pierce.

Pierce appeals, relying primarily upon the claim that there exists a secular aspect to his termination which can be reviewed by the courts. he claims that

the Church breached an established employment procedure, entitling him to, among other things, counseling once it was determined he was not being effective. We affirm.

II. *Background Facts and Proceedings.*

The Seventh-Day Adventists Church is a worldwide ecclesiastical corporation organized into a hierarchial structure. The Iowa-Missouri Conference is part of the Mid-American Union Conference, which in turn is part of the North American Division of the General Conference. The General Conference is the highest level of the hierarchy.

The "Working Policy of the North American Division of the General Conference" provides the policies and guidelines for the churches it oversees. Pursuant to the Working Policy, each local conference is to elect an executive committee. The executive committee has authority over all of the churches within the local conference. The by-laws of the Iowa-Missouri Conference enable executive committees to hire ministers.

On February 26, 1985, the executive committee of the Iowa-Missouri Conference voted to hire Pierce as a ministerial intern upon receipt of his bachelor's degree in theology. Pierce was placed in positions as a pastor and associate pastor in several Seventh-Day Adventists churches in the State of Missouri.

On February 21,1990, the executive committee voted to terminate Pierce's employment. This was done without counseling or giving Pierce an opportunity to correct any perceived deficiencies in his ministry. Pierce unsuccessfully challenged his termination before the executive committee, but took his appeal no further.

Pierce, his wife and his children (Pierce) brought this action against the Iowa-Missouri Conference (Church). He challenged his termination upon the following theories: (1) breach of a unilateral contract of employment; (2) negligence/breach of assumed duty; (3) defamation; (4) intentional infliction of severe emotional distress; (5) equitable fraud/constructive fraud; and (6) economic duress.

The Church filed a motion for summary judgment. It argued the free exercise clause of the First Amendment precluded the court from exercising authority over this dispute. Relying primarily upon *Serbian Eastern Orthodox Diocese for the United States of America & Canada v. milivojevich,* 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed. 2d 151 (1976), the district court agreed. The court determined the review of Pierce's termination would involve an inappropriate interpretation of the Church's policies and procedures. The court denied Pierce's Iowa Rule of Civil Procedure 179(b) motion. Pierce appeals.

III. *Scope of Review.*

Summary judgment is proper when there appears no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c). The burden is upon the moving party to show that no issue of material fact exists. *Northrup v. Farmland Indus.*, 372 N.W.2d 193, 195 (Iowa 1985). Moreover, the resisting party is afforded every legitimate inference that can be reasonably deduced from the evidence and a fact question is generated if reasonable minds could differ on how this issue should be resolved. *Henkel v. R&S Bottling Co.*, 323 N.W.2d 185, 187-88 (Iowa 1982).

IV. *Arguments and Analysis.*

On appeal, Pierce argues primarily that the First Amendment does not prohibit the court's review in this case because religious, doctrinal or theological matters are not implicated. In support of this claim, he relies substantially upon *Drevlow v. Lutheran Church, Missouri Synod,* 991 F.2d 468 (8th Cir. 1993) (remand in wrongful termination action for consideration of secular claims related to dissemination of false information in minister's employment file), and *Minker v. Baltimore Annual Conference of United Methodist Church,* 894 F.2d 1354 (D.C. Cir. 1990) (remand for determination of whether minister and church had oral contract for minister's transfer to congregation more suited to his abilities). He argues these cases

stand for the proposition that, notwithstanding *Milivojevich*, there are certain aspects of a minister's termination which can be reviewed by secular courts.

Pierce maintains the secular aspect of his claim concerns a unilateral contract created by Working Policy 60 D 10. The pertinent provisions of this policy state:

> The effectiveness of all employees is to be reviewed periodically. Where employees are found to be ineffective, counsel shall be given them and if necessary they should be given other lines of work or be advised to seek employment outside of the denomination.

He admits the issue of whether he was ineffective is purely ecclesiastical and cannot be reviewed by the courts. He argues, however, that the issue of whether his effectiveness was reviewed periodically or whether he was given counseling is separate and distinct from the issue of whether he was ineffective. He maintains the issues related to a lack of review and counseling can be reviewed by the courts.

The Church claims *Drevlow* and *Minker* can be distinguished on their facts. It argues that, unlike the issues found reviewable in these cases, Pierce's dismissal involves an interpretation of the ecclesiastical aspects of the Church's employment policies and procedures. The Church maintains courts that have considered similar issues related to a minister's termination have determined review is barred by the First Amendment. *See Lewis v. Seventh Day Adventists Lake Region Conference,* 978 F.2d 940 (6th Cir. 1992) (First Amendment precludes intervention into decisions of religious judicatory bodies regarding the employment of clergy, even if claims involve misapplication of church's procedures and laws); *Scharon v. St. Luke's Episcopal (Presbyterian Hosps.,* 929 F.2d 360 (8th Cir. 1991) (personnel decisions of church-affiliated institutions not reviewable by secular courts); *Rayburn v. General Conference of Seventh-Day Adventists,* 772 F.2d 1164 (4th Cir.) *cert denied,* 478 U.S. 1020 (1985) (court refused to review sexual and racial discrimination claims of plaintiff denied pastoral position because she was female); *Kaufmann v. Sheehan,* 707 F.2d 355 (8th Cir. 1983) (court refused to review claim of whether minister was denied due process in ecclesiastical tribunal); *McClure v. Salvation Army,* 460 F.2d 553 (5th Cir.), *cert. denied,* 409 U.S. 896 (1972) (Civil Rights Act does not apply to employment of ministers.)

The First and Fourteenth Amendments to the United States Constitution prohibit courts from

interfering with ecclesiastical decision making. *Milivojevich,* 426 U.S. at 698, 96 S.Ct. at 2375, 49 L. Ed. 2d at 156. Consistent with this prohibition, Iowa courts have traditionally refrained from interfering in purely ecclesiastical matters. *See Marks v. Estate of Hartgerink,* 528 N.W.2d 539, 544 (Iowa 1995) (citations omitted). However, we have not been confronted with a claim that a church has failed to follow its policies in terminating a minister.

We believe Pierce's effectiveness as a minister was the "essence" of his termination. As the Sixth Circuit of Appeals correctly determined, a church's relationship with its ministers implicates "internal church discipline, faith, and organization, all of which are governed by ecclesiastical rule, custom and law. *Hutchison v. Thomas,* 789 F.2d 392, 396 (6th Cir.), *cert. denied,* 479 U.S. 885, 107 S. Ct. 277, 93 L. Ed. 2d 253 (1986). "The minister is the chief instrument by which the church seeks to fulfill its purpose." *McClure,* 460 F.2d at 558-59. "Matters touching this relationship must necessarily be recognized as of prime ecclesiastical concern." *Id.*

V. *Conclusion.*

We agree with those courts that have determined the First Amendment requires secular tribunals to refuse to interfere with a church's relationship with its ministers. Accordingly, we decline to review any aspect of the executive

committee's decision to terminate Pierce's employment as a ministerial intern. The district court's order granting the Church's motion for summary judgment is affirmed.

AFFIRMED.

This opinion shall be published.

APPENDIX B

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

DAVID PIERCE, Individually, and as Next Friend of MELANIE PIERCE, JASON PIERCE and NATHANIEL PIERCE, Individually,	)	LAW NO. CL 095-56065
Plaintiffs,	)	
vs.	)	RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
IOWA-MISSOURI CONFERENCE SEVENTH-DAY ADVENTISTS,	)	

Defendant's Motion for Summary Judgment came on for a hearing before the Court. Plaintiffs appeared by Attorney Robert K. DuPuy. Defendant appeared by Attorney John A. Ferguson, Jr. The Defendant filed a Reply Brief on January 5, 1994. On January 12, 1994, the Plaintiffs filed a Brief in Response to the Defendant's Reply Brief. After hearing the arguments of counsel, reviewing the counsel's briefs, and being fully advised in the premises, the Court finds as follows:

FINDINGS OF FACT

1. Plaintiffs are residents of Lincoln, Nebraska. At all times material, David Pierce and Mary Pierce have been husband and wife. Melanie Pierce, Jason Pierce, and Nathaniel Pierce and the children of David and Mary Pierce.

2. Defendant is a religious entity having its principal place of business in West Des Moines, Iowa.

3. From June, 1985 through March 31, 1990, Plaintiff David Pierce was employed by the Defendant as an intern minister, who served in the State of Missouri.

4. On March 31, 1990, the Defendant terminated Plaintiff David Pierce from his employment as an intern minister.

5. On March 31, 1992, the Plaintiffs filed their Petition against the Defendant.

6. On May 4, 1993, the Plaintiffs filed their First Amended and Substituted Petition which alleged seven counts against the Defendant. The Plaintiffs alleged the following counts:

1) Breach of unilateral contract of employment;
2) Negligence/Breach of assumed duty;

3) Defamation as a result of the termination;
4) Intentional infliction of several emotional distress;
5) Equitable fraud/Constructive fraud;
6) Economic duress;
7) Punitive damages.

See Plaintiff's First Amended and Substituted Petition.

7. On November 3, 1993, the Defendant filed a Motion for Summary Judgment, which claimed that the Plaintiffs' claims are barred by the First Amendment of the United States Constitution. The Plaintiffs resist.

CONCLUSIONS OF LAW

The First Amendment of the United States Constitution provides, in pertinent part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]" The Fourteenth Amendment makes the First Amendment applicable to the State of Iowa. The Defendant has moved for summary judgment based on a Constitutional First Amendment argument. The primary focus of the Defendant's argument is that the court lacks the authority to examine the policies, procedures, and actions of the Iowa-Missouri Conference of Seventh-Day Adventists concerning the employment and eventual termination of Plaintiff David Pierce.

One of the seminal cases in this area of the law was decided by the United States Supreme Court in Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich, 426 U.S. 696, 96 S. Ct. 2372, 49 L. Ed.2d 151 (1976). In this case, the United States Supreme Court reviewed a decision of the Supreme Court of Illinois, in which the Illinois Supreme Court,

> invalidated the decision to defrock Dionisije on the ground that it was "arbitrary" because a "detailed review of the evidence discloses that the proceedings resulting in Bishop Dionisije's removal and defrockment were not in accordance with the prescribed procedure of the constitution and the penal code of the Serbian Orthodox Church."

Milivojevich, 426 U.S. at 718.

The United States Supreme Court found that the Illinois Supreme Court had overextended its authority when it delved into an examination of the procedures of the Serbian Orthodox Church's constitution or penal code. In Milivojevich, the Supreme Court held that the inquiry into whether the church laws and

procedures had been complied with violated the First Amendment. Milivojevich, 426 U.S. at 713, 96 S.Ct. at 2382; see also Patterson v. Southwestern Baptist Seminary, 858 S.W.2d 602, 605 (Tex. App. - Fort Worth 1993). The Supreme Court in Milivojevich stated,

> [I]t is the essence of religious faith that ecclesiastical decisions are reached and are to be accepted as matters of faith whether or not rational or measurable by objective criteria. Constitutional concepts of due process, involving secular notions of "fundamental fairness" or impermissible objectives, are therefore hardly relevant to such matters of ecclesiastical cognizance.

Milivojevich, 426 U.S. at 714-15, 96 S. Ct. at 2382-83. The United States Supreme Court reversed the decision of the Illinois Supreme Court on this issue.

Several Eighth Circuit courts have decided similar issues concerning the court's authority to examine questions concerning the employment policies of religious organizations. The Eighth Circuit courts have noted that the minister plays a particularly

sensitive role in any church organization. Kaufman v. Sheehan, 707 F.2d 355, 359 (8th Cir. 1983). The court has stated that the "determination of 'whose voice speaks for the church; is per se a religious matter. . . . We cannot imagine an area of inquiry less suited to a temporal court. (citation omitted)." Scharon v. St. Luke's Episcopal Presbyterian Hospital., 929 F.2d 360, 363 (8th cir. 1991).

> Personnel decisions by church-affiliated institutions affecting clergy are per se religious matters and cannot be reviewed by civil courts to determine the meaning of religious doctrine and canonical law and to impose a secular court's view of whether in the context of the particular case religious doctrine and canonical law support the decision the church authorities have made. This is precisely the kind of judicial second-guessing of decision-making by religious organizations that the Free Exercise Clause forbids.

Scharon, 929 F.2d at 363.

Other circuit courts have also noted the special relationship which exists between a minister and a religious organization. "The relationship between an organized church and its ministers is its lifeblood. The minister is the chief instrument by which the church seeks to fulfill its purpose. Matters touching this relationship must necessarily be recognized as of prime ecclesiastical concern." McClure v. Salvation Army, 460 F.2d 553, 558-59 (5th Cir.), cert. denied, 409 U.S. 896 (1972). it is this special relationship between church and minister with which the court must avoid interfering.

In the present case, the underlying facts involve the termination of Plaintiff David Pierce from his position as an intern minister for the Iowa-Missouri Conference of Seventh-Day Adventists. The Plaintiffs attempt to argue that their Petition is not completely tied to this employment situation. Rather, they assert that their claims are based on secular contract claims. The Plaintiffs content that the Iowa-Missouri Conference of Seventh-Day Adventists did not comply with its own working policies, did not properly apply its own guidelines and procedures, and did not properly apply its own guidelines and procedures, and did not operate under a doctrine of fairness in its employment practices.

The Plaintiffs argue that the alleged breach is essentially that the Iowa-Missouri Conference of Seventh-Day Adventists did not evaluate David

Pierce's performance as a minister in accord with the church's working policy and guidelines. As a matter of fact, the Plaintiffs go so far as to state,

> if there is one scrap of paper in David Pierce's personnel file, prior to the date of his termination, that can possibly, no matter how remotely, be interpreted to be an evaluation of Pierce's performance, whatever the criteria, or any documentation, of any kind of any perceived deficiency in his performance, whatever the criteria for judging such a deficiency, this case should be thrown out of court, immediately.

See Plaintiffs' Brief in Response to Defendant's Reply Brief.

Conversely, the Defendant asserts that each claim in the Plaintiffs' first Amended and Substituted Petition is related to the termination decision of the Iowa-Missouri Conference of Seventh-Day Adventists. The Defendant contends that David Pierce was terminated for a failing ministry. Records exist to show that the Defendant terminated the Plaintiff for

work-related reasons and that David Pierce even felt that he was terminated for failing in his ministry. See Exhibit C Letter from David Pierce to Elder Wampler and Elder Brown. The Defendant argues that it is in precisely these situations that the court is prohibited from interfering because the court should not set out to second-guess the decision-making of a religious organization.

This court finds that as to whether the Defendant followed proper procedure, this question cannot be addressed by this court. This court is prohibited from interpreting the Defendant's policies and procedures in order to determine whether or not the Executive Committee followed them. See Milivojevich, 426 U.S. at 713, 96 S. Ct. at 2382. The court further finds that the claims of alleged contractual breach asserted by the Plaintiffs are significantly tied to the termination of David Pierce as an intern minister. Like the United States Supreme Court's decision in Milivojevich and the Eighth Circuit Court's decision in Scharon, the court in the present case should find that it is beyond its jurisdiction to delve into a church's decision to terminate an intern minister.

Although the Plaintiffs have attempted to separate their claims from the termination, the two are intertwined. Even the Plaintiffs in their allegations intertwined their claims with the termination. For example, the term "wrongfully

terminated" appears twice in the Plaintiffs' Amended Petition; the allegation that Plaintiff David Pierce "has been deprived of gainful employment" appears three times; and the phrase "wrongdoing in connection with is termination" appears four times. The Plaintiffs' claims are certainly tied to David Pierce's termination.

In accord with Milivojevich and Scharon, this court cannot look into the termination procedures of religious organizations. This court finds the Plaintiffs' contract claims are intertwined with ecclesiastical doctrines which the court must refrain from addressing. The inquiry required of the court to determine the reason for termination and whether proper procedures were followed are precisely the sorts of inquiry that the First Amendment prohibits.

RULING

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendant's Motion for Summary Judgment is GRANTED.

(Signature affixed)
Judge Jack D. Levin
Fifth Judicial District of Iowa

Dated this 14th day of March, 1994.

APPENDIX C

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

DAVID PIERCE, Individually, and as Next Friend of MELANIE PIERCE, JASON PIERCE, and NATHANIEL PIERCE, and MARY PIERCE, Individually,	)	NO. CL 095-56065
	)	
	)	
	)	RULING ON
	)	PLAINTIFFS 179(b)
	)	MOTION
Plaintiffs,	)	
	)	
vs.	)	
	)	
IOWA-MISSOURI CONFERENCE OF SEVENTH-DAY ADVENTISTS,	)	
	)	
	)	
Defendant.	)	

Hearing on Plaintiffs' Motion Pursuant to Iowa R. Civ. P. 179(b) was held. The Court, having read the motion, Defendant's opposition, and Plaintiffs' reply, and having heard arguments from counsel, finds and orders as follows:

The Court found for the Defendant and granted its motion for summary judgment dismissing Plaintiffs'

case. The Plaintiffs maintain in their 179(b) motion that the Defendant failed to follow its own procedure and that this factual matter is reviewable by the Court.

The Court found in its ruling on Defendant's Motion for Summary Judgment that interpreting the Defendant's procedure and determining whether Defendant followed this procedure in terminating the Plaintiff is not reviewable pursuant to the First Amendment to the United States constitution. The Court, having again reviewed the matter, comes to the same conclusion; and, therefore, the Plaintiffs' motion should be denied.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiffs' Motion Pursuant to Iowa R. Civ. P. 179(b) is denied.

Dated this 2nd day of June, 1994.

Signature Affixed
Judge, Fifth Judicial District of Iowa

APPENDIX D

IN THE SUPREME COURT OF IOWA

No. 94-623

ORDER

DAVID PIERCE, Individually, and as Next Friend of MELANIE PIERCE, JASON PIERCE, and NATHANIEL PIERCE, and MARY PIERCE, Individually,

Appellants,

vs.

IOWA-MISSOURI CONFERENCE OF SEVENTH-DAY ADVENTISTS,

Appellee.

After consideration by the Court, en banc, Appellants' Petition for Rehearing in the above-captioned case is hereby overruled and denied.

Dated this 15th day of September, 1995.

THE SUPREME COURT OF IOWA

(Signature Affixed)
Arthur A. McGiverin
Chief Justice

APPENDIX E

WORKING POLICY

North American Division

of the General Conference of

Seventh-day Adventists

1989-1990 Edition

Printed in U.S.A.

REVIEW AND HERALD PUBLISHING ASSOCIATION
Washington, DC 20039-0555
Hagerstown, MD 21740

D EMPLOYEES - ACCREDITING, TRANSFERRING, EMPLOYMENT REGULATIONS

D 05 Credentials and Licenses

D 05 10 Ministerial Employees - Ordained, Licensed and Commissioned - 1. Ministerial Credential - To ordained minister.

2. Ministerial License - to unordained pastors, evangelists, and Bible teachers who are on the path toward ordination. (See L 10).

3. Commissioned Minister Credential-a. To associates in pastoral care; Bible instructors; General Conference, union, and local conference treasurers and departmental directors including associate and assistant directors; health-care institution chaplains; presidents and vice presidents of major institutions; principals of secondary schools; auditors (General Conference director, associates, area and district directors); and field directors of the Christian Record Services. These individuals should have significant experience in denominational service, usually not fewer than five years, and demonstrate proficiency in the responsibilities assigned to them. Their remuneration should be at approximately the maximum for their category in the denominational wage scale.

b. It is recommended that an appropriate commissioning service be conducted when an employee is granted a Commissioned Minister Credential.

c. It is not the normal practice to ordain an individual holding a Commissioned Minister Credential.

4. Commissioned Minister License-To employees listed in paragraph 3, with limited experience (fewer than five years).

. . .

D 60 10 Productivity-Care is to be exercised in making assignments to conference and institutional employees so as to fully utilize their capabilities. The effectiveness of all employees is to be reviewed periodically. Where employees are found to be ineffective , counsel should be given them and if necessary they should be given other lines of work or be advised to seek employment outside of the denomination.

APPENDIX F

Focus on North America

OFFICE OF HUMAN RELATIONS HELPS CHURCH RUN MORE SMOOTHLY

By handling racial, cultural, and employment disputes, the General Conference department builds bridges throughout the church.

Ten years ago the Annual Council voted to establish the Office of Human Relations at the General conference. This department was given the responsibility of dealing with specific social problems confronting the Adventist Church. Warren Banfield has served as director of the department since its formation. He will retire on April 30, 19889.

Dr. Rosa Banks, assistant to the president of Oakwood College, will become the new director. Owen Troy, communication director for the North American Division (NAD), and Carlos Medley, news editor of the Adventist Review, interviewed Banfield recently concerning the work of this office.

Troy: What types of conflicts does your department deal with?

Banfield: We have been called on by the church to resolve racial and cultural conflicts, employer and employee problems, and issues regarding the role of

women. The new conciliation and grievance process is one method used to effect resolutions in such cases.

During its first year the department received eight formal complaints, plus many informal ones. These days we receive on the average of two complaints per week.

Yvonne Vanderhorst, our department's secretary, informed me that there were four calls yesterday and two before noon today requesting assistance.

Troy: Do you see any trend in the types of complaints you receive?

Banfield: We have witnessed a dramatic change over the past 10 years. When we started the department, 80 percent of the complaints dealt with racial and cultural issues. Today, 80 percent of the complaints deal with employer-employee relationships.

Medley: In many instances thee are no routine performance evaluations of supervisory personnel, but only of nonsupervisory personnel. Does this create problems?

Banfield: Unless supervisory personnel are evaluated, blame will generally be placed on the nonsupervisory people.

If we're going to have maximum efficiency and harmony, we must evaluate the performance of those at the top as well as those at the bottom of the ladder.

Medley: Why has this condition been allowed to go on for so long?

Banfield: Supervisors often resist such evaluations. However, more and more church administrators are becoming aware of the need for this. Eventually it will happen. It is a slow process, since breaking with tradition is not an easy thing to do.

I might say that Elder Charles Bradford, the North American Division president, and Elder Neal Wilson, the General Conference president, have set the example and have been evaluated. Some union and local conference presidents and their office staffs have also been evaluated.

Medley: Is there any movement in this direction now?

Banfield: Yes, there is a growing awareness that these evaluations are necessary and that until both supervisory and nonsupervisory personnel are evaluated, we will never arrive at the level of efficiency and fairness that the church needs. It is being worked on.

Troy: Are racial problems continuing to decline?

Banfield: For four or five years there was a lull in racial conflicts, but during the past two years, we have seen a gradual rise in these problems.

Troy: To what do you attribute this rise?

Banfield: It results partially from the perceived stance of the Reagan administration and also from the changing political atmosphere in this country. We have seen a rapid growth in minority populations in the United States. A huge influx of minority converts has impacted on the church. Heterogeneous groups are more difficult to deal with than homogeneous groups in that they tend to create tensions not usually found in homogeneous groups.

The church must develop more cosmopolitan leaders, leaders whose thinking has moved from a mono-cultural frame of reference to a multicultural one. Leaders must understand that our North American membership is moving from a monolithic culture to diversified cultures that include Black, Hispanic, Asian, and South Pacific groups.

Troy: What are some causes of racial and cultural problems?

Banfield: There are a number. First, we all have a racial and cultural identity. Second, each

culture has different needs. Third, in some cases language barriers make communication difficult. Fourth, socio-economic differences aggravate many situations. Problems usually develop as a result of several of these factors working together.

We can celebrate cultural differences, but at the same time we should refrain from cultural exclusiveness. The "melting pot" idea is no longer accepted as reality.

Troy: Do you think a person's culture should determine the way he or she acts?

Banfield: Every culture has its vices and virtues. None has a monopoly on goodness or badness. While various cultures have a place in the church, each should be subjected to the refining process of the Holy Spirit.

Troy: Has the church taken any stand on race and culture?

Banfield: In the north American Division Working Policy, page 51, C 50, you will find an excellent statement on human relations, voted at the 1985 General Conference session in New Orleans. The fundamental beliefs of Seventh-day Adventists contain a doctrine on Christian relationships. The Adventist Review and other church journals periodically publish articles on such relationships.

Troy: What can the Office of Human Relations do to help resolve these racial and cultural differences?

Banfield: We offer workshops and seminars for better racial and cultural understanding. The Center for Human Relations, located at Andrews university, serves as the right arm of our department. Carole Kilcher, director of the center, develops agendas and assembles personnel for seminars. This center also develops resource and educational materials and does our research. It forms a part of the Institute of Church Ministry.

Dr. Sakae Kubo recently completed The God of Relationships. In the works in Women in Society and the SDA Church, an anthology with each chapter written by a different Adventist woman.

Troy: You mentioned that the majority of your work deals with employer-employee conflicts. It seems strange that this type of conflict can exist in the church.

Banfield: It may seem so, but improper methods of disciplining and firing employees can lead to conflicts that are not easily resolved. Misunderstandings or a lack of knowledge concerning racial and cultural differences and needs can precipitate crises. Also, insensitivity and lack of fairness in administering policy, and lack of

understanding of federal, state and local labor laws, result in many conflicts.

Medley: I understand that some employees either have no job description or one that is inadequate.

Banfield: You would think that everyone who works for an organization would have a job description, but that is not always the case. A person may start out with one description and wind up doing a multitude of other things not in his description. This can create problems.

Medley: Is there an effort to correct this?

Banfield: The Personnel Department here at the General Conference is constantly encouraging leadership to see that everybody has a viable job description. The department maintains an administrative assistant who specializes in writing job descriptions. We can run into legal problems in this area if we don't. The job description is related to salary and evaluations, and when it changes, it could affect your salary.

Medley: Are many employees not told what their benefits are?

Banfield: When I came into the ministry you not only weren't told, you didn't ask. it's not like that

today; if you ask, you will be told. In many conference institutions you will be told everything when you come on the job. But that is not yet true throughout the system. Benefits should be spelled out in every handbook, but sometimes conferences do not keep their handbooks current.

Troy: What procedures should one follow to resolve conflicts with other members of the church?

Banfield: The procedures used depend on the level at which the dispute arises. In the past you carried your complaint to the next higher organization. Conferences and institutions that have voted the new NAD conciliation and dispute resolution policy have three types of resolution: informal negotiation, mediation, and binding or nonbinding arbitration.

Troy: Please describe binding arbitration.

Banfield: If negotiation, mediation, and nonbinding arbitration fail to settle and issue, the last resort is binding arbitration. The secretary of the organization chooses a panel,whose members must be accepted by the disputants, with the understanding that the conflicting parties will abide by the decision of the arbitration panel.

On the union conference level a General Conference observer will attend.

Troy: Has arbitration been used in any of our conferences or institutions?

Banfield: Before the NAD conciliation and dispute resolution procedures can be used, they must be adopted by vote of the conference executive committee. So far we have used the arbitration process in four unions, with satisfactory results.

Most of our institutions have their own grievance process. Employees must follow the procedure of their institution.

Medley: Considering all these problems, how is morale among church employees?

Banfield: Overall, morale in the church is good, but there is always room for improvement. The Caring Church has to have meaning in the context of employer-employee relations. if employees don't feel that the church is dealing with them fairly, they will exhibit serious morale problems that sometimes result in legal threats and actions.

Medley: Have employees taken legal action when unfairly dismissed?

Banfield: According to General Conference policy, if a person has a problem and the supervisor is dissatisfied with his or her performance, the supervisor must document his efforts to persuade the

person to perform adequately. If this is not done and all of a sudden he decides to dismiss that employee, the person may decide to take legal action. Sizable sums have been paid in such cases.

Authorities may ask to review the individual's personnel file and review the job description. They want to know also if we are in compliance with our church policies.

Medley: There is an assumption that with separation of church and state, the church is not accountable to the state in these matters.

Banfield: For a long time many church leaders felt that because we are a church, we are exempt from federal and state laws in the way we run our operation. But the guidelines that apply to any business organization apply to the church. When it comes to our doctrine, our practice, our beliefs, we have a free hand. We may even have the right to employ only those who belong to our own organization. But fairness in employment is another matter.

Government regulations operate in the area of nondiscrimination regarding race or sex.

Troy: I understand that the Office of Human Relations has become involved in a new program for the handicapped?: How is it involved?

Banfield: Recently we have been working with Dr. Robert Wilson, a blind ordained SDA minister who is in charge of pastoral care at the Review and Herald Publishing Association. Dr. Wilson is developing a program to raise the consciousness of church leaders in the area of employment opportunities for handicapped members of our church who have marketable skills.

Like other organizations, the Adventist Church must operate in an imperfect world, with imperfect people and imperfect laws. However, when Christian principles are applied in the workplace, many disputes and conflicts will subside and a new window of opportunity will open for those members who desire to serve the church.

APPENDIX G

IOWA-MISSOURI CONFERENCE EXECUTIVE COMMITTEE MINUTES - January 18, 1990
Page Five

MOBERLY/MACON DISTRICT

The president reported that Keith Hanson has moved to his new assignment in the Idaho Conference and that, therefore, we need to choose a pastor for the Moberly/Macon, Missouri District. He also reported that a meeting is scheduled with the Moberly church to discuss what kind of a pastor they feel is needed in their district. In view of the fact that this meeting with the Moberly church has not yet taken place, it was:

90:13 VOTED To authorize the Conference officers to choose a pastor for the Moberly/Macon District after dialoguing with interested individuals from the Moberly/Macon District.

KANSAS CITY AREA DISTRICT REARRANGEMENT

The Conference president reported that David Pierce has one church which is the Oak Grove Church and Roger Graham has only one church to pastor which is the Grandview Church. He

further pointed out that the Conference cannot justify having one pastor for each of these churches in view of the tight financial situation in the Conference. Therefore, it was:

90:14 VOTED To combine the Oak Grove and Grandview Churches into one district, and further, to ask Pastor Graham to the pastor of this district.

The president also reported that there was some question regarding the effectiveness of David Pierce's leadership in the Oak Grove Church and his future in the ministry in general. After discussing the record of his work in this conference, it was:

90:15 VOTED To ask the Conference officers to visit with David Pierce and report back to the Executive Committee before making a final determination regarding his future employment in the Conference.

APPENDIX H

WORKING POLICY

North American Division of the General Conference of Seventh-day Adventists

1988-1989 Edition

PRINTED IN U.S.A.

Review and Herald Publishing Association
Washington, DC 20039-0555
Hagerstown, MD 21740

B 20 Personal Relations and Organizational Authority

. . .

B 20 15 Adjustment of Personal Differences - Persons accepting employment in any branch of the work of the denomination must do so upon the definite agreement that they will submit to the properly constituted authority of the Church in the matter of adjustment of all personal differences arising between themselves and employing boards or committees,and that they shall never appeal to any court of law for redress from such adjustments as may be made by the denomination concerning any personal claim they may make.

. . .

APPENDIX I

WORKING POLICY

North American Division of the General Conference of Seventh-day Adventists

1989-1990 Edition

PRINTED IN U.S.A.

Review and Herald Publishing Association
Washington, DC 20039-0555
Hagerstown, MD 21740

B 20 Personal Relations and Organizational Authority

. . .

B 20 10 Appeal for a Hearing - Provision is made in the NAD Conciliation and Dispute Resolution Procedures document (see NAD 88-306) by which aggrieved individuals or groups in the Church may appeal for a hearing in order to resolve conflict without resorting to litigation. Employees of church institutions which have established grievance procedures are to follow the procedures of their employing institutions.

B 20 20 Adjustments of Differences - Divisions and General Conference - If any adjustment is needed regarding differences of opinion arising between the division committee and the General Conference, the matter is to be referred to the next Annual Council.

. . .

Supreme Court, U.S.
FILED
APR 24 1996
CLERK

(2)

No. 95-1297

In The

Supreme Court of the United States

October Term, 1995

DAVID PIERCE, ET AL.,

Petitioners,

v.

IOWA-MISSOURI CONFERENCE
OF SEVENTH-DAY ADVENTISTS,

Respondent.

**On Petition For A Writ Of Certiorari
To The Supreme Court Of The State Of Iowa**

BRIEF FOR THE RESPONDENT IN OPPOSITION

JAMES H. KIZZIAR, JR.
Counsel of Record
JOHN A. FERGUSON, JR.
MATTHEWS & BRANSCOMB, P.C.
106 S. St. Mary's Street
San Antonio, Texas 78205
(210) 226-4211
Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether the Supreme Court of Iowa correctly determined that the free exercise clause of the First Amendment precluded it from reviewing any issues related to the Seventh-day Adventist Church's policies, procedures or actions in terminating the employment of one of its ministers, David Pierce?

PARTIES

Plaintiffs:	David Pierce; Mary Pierce, his wife; and Melanie Pierce, Jason Pierce and Nathaniel Pierce, their children.
Defendant:	Iowa-Missouri Conference of Seventh-day Adventists.

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STATEMENT OF THE CASE

On February 26, 1985, the Executive Committee of the Iowa-Missouri Conference of the Seventh-day Adventist Church (the Church) voted to hire David Pierce as a ministerial intern. App. p. 20.

During his employment as a ministerial intern with the Church, David Pierce was assigned as a pastor, and as an assistant pastor, to various Seventh-day Adventist Churches in the State of Missouri. App. p. 20.

On February 21, 1990, the Executive Committee voted not to continue the employment of David Pierce as a ministerial intern beyond March 31, 1990, because the Executive Committee felt that Pierce had failed to prove himself to be called to the ministry. In the opinion of the Executive Committee, Pierce had failed to show satisfactory and effective leadership progress and professional development in his work as an intern minister sufficient for him to continue to serve as a minister of the gospel. App. p. 20. The Executive Committee also perceived that Pierce's ministry was failing, and that was one of the primary reasons for his termination from employment. App. pp. 20-21, 23.

David Pierce did not appeal the matter of his termination to any level of the Church hierarchy beyond the Executive Committee of the Iowa-Missouri Conference. The Executive Committee was the highest level of the Church hierarchy to which the matter of his termination was carried. App. p. 21.

On March 31, 1992, Pierce, his wife and children brought this action against the Church. In their First

Amended and Substituted Petition, the Pierce's challenged David Pierce's termination upon the following theories: (1) breach of a unilateral contract of employment; (2) negligence/breach of assumed duty; (3) defamation as a result of Pierce's termination; (4) intentional infliction of emotional distress; (5) equitable fraud/constructive fraud; and (6) economic duress.

The Church filed a motion for summary judgment. It argued that the free exercise clause of the First Amendment precluded the Iowa district court from exercising authority over this dispute. The Iowa district court agreed, and granted the motion, after determining that review of Pierce's termination would involve an inappropriate interpretation of the Church's policies and procedures. On appeal, the Iowa Supreme Court affirmed in a published opinion.

REASONS FOR DENYING THE WRIT

I.

REVIEW IS UNWARRANTED BECAUSE THE DECISION OF THE IOWA SUPREME COURT WAS CORRECT. IT DOES NOT CONFLICT WITH A DECISION OF THIS COURT OR ANY COURT OF APPEALS.

A. This Court's Decision in Milivojevich Has Been Consistently Followed By the Circuit Courts and By the State Courts

The First Amendment to the United States Constitution provides, in part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the

free exercise thereof[.]" The First Amendment is applicable to the courts of Iowa by the Fourteenth Amendment to the U.S. Constitution.

This Court has long held that on matters of church discipline, faith, practice, and religious law, the Free Exercise Clause requires all civil courts to refrain from interfering with the determination of the "highest of these church judicatories to which the matter has been carried." *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 727, 20 L. Ed. 666 (1871).

This Court most recently affirmed this doctrine in *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976), in which the Court stated as follows:

> [I]t is the essence of religious faith that ecclesiastical decisions are reached and are to be accepted as matters of faith whether or not rational or measurable by objective criteria. Constitutional concepts of due process, involving secular notions of "fundamental fairness" or impermissible objectives, are therefore hardly relevant to such matters of ecclesiastical cognizance.

Id. at 714-15. Civil courts are bound to accept the decisions of the judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law. *Id.* at 713.

In the instant case, the undisputed summary judgment evidence established that: (1) the Church's Executive Committee had the authority to employ ministers; (2)

the Executive Committee exercised that authority by voting not to continue David Pierce's employment as a minister of the gospel, in part because the Executive Committee perceived that Pierce's ministry was failing; and (3) the Executive Committee was the highest level of the Church hierarchy to which the matter of Pierce's termination was carried. In the final analysis, therefore, under *Milivojevich*, the Iowa civil courts could not substitute their judgment for the judgment of the Church's Executive Committee which had the ultimate authority to employ ministers generally, and Pierce specifically.

Milivojevich has been consistently followed by the circuit courts, which have declined to exercise jurisdiction in employment disputes between churches and their clergy. In *Lewis v. Seventh-day Adventists Lake Region Conference*, 978 F.2d 940, at 942-43 (6th Cir. 1992), for example, the Sixth Circuit Court of Appeals held as follows:

> We conclude that the First Amendment bars civil courts from reviewing decisions of religious judicatory bodies relating to the employment of clergy. *Even when, as here, the plaintiff alleges that the religious tribunal's decision was based on a misapplication of its own procedures and laws, the civil courts may not intervene.*

(emphasis added). *See also Natal v. Christian & Missionary Alliance*, 878 F.2d 1575 (1st Cir. 1989); *Rayburn v. General Conference of Seventh-day Adventists*, 772 F.2d 1164 (4th Cir. 1985), *cert. denied*, 478 U.S. 1020, 106 S. Ct. 3333, 92 L. Ed. 2d 739 (1986); *Kaufmann v. Sheehan*, 707 F.2d 355 (8th Cir. 1983).

Milivojevich has also been followed by the state courts, which have similarly held that state trial courts

have no jurisdiction over the types of employment claims asserted by the Petitioners in this case. *See, e.g., Patterson v. Southwestern Baptist Theological Seminary*, 858 S.W.2d 602 (Tex. App. – Fort Worth 1993, n.w.h.) (affirming a Texas state trial court's grant of summary judgment for the defendant, because, under *Milivojevich*, the trial court could not delve into issues concerning whether the plaintiff's employment was terminated *in accordance with the defendant's policies and procedures*) (emphasis added); *McDonnell v. Episcopal Diocese of Ga.*, 381 S.E.2d 126, 128 (Ga. Ct. App. 1989) (affirming a Georgia state trial court's grant of summary judgment in favor of the defendant on a minister's breach of contract action, because, under *Milivojevich*, it would be unconstitutional for a court to decide whether a binding civil contract was intended by the defendant's policy manual), *cert. denied*, 493 U.S. 935 (1989); *Green v. United Pentecostal Church Int'l*, 899 S.W.2d 28 (Tex. App. – Austin 1995, n.w.h.).

In Count I of their First Amended and Substituted Petition, the Pierces alleged that the Church "breached its unilateral employment contract with David Pierce, *by terminating him in violation of Defendant's . . . own published and communicated working policies, guidelines and procedures.*" (emphasis added). App. p. 4. However, as the federal and state court authorities cited above have expressly held, the Iowa civil courts are prohibited by the First Amendment from interpreting the Church's policies and procedures in order to determine whether or not the Executive Committee followed them in its actions toward Pierce. Such an inquiry is directly contrary to the mandates of the Supreme Court in *Milivojevich*, which specifically rejected the proposition that a church's alleged

failure to follow its own procedures created jurisdiction for civil court review.

The gravamen of the Pierces' claims under Counts II through VI of their First Amended and Substituted Petition was also that the Church did not follow its policies, guidelines and procedures in terminating Pierce's employment as an intern minister. These additional claims are subsidiary to and dependent on the Pierces' principal claim under Count I for breach of contract, and all arise directly from the Church's conduct in terminating Pierce's employment as an intern minister.

In Count II, the Pierces alleged that the Church failed to exercise reasonable care in the application of its "own working policies, guidelines, and procedures *in the process of making its decision on whether to continue or terminate the employment of Plaintiff, David Pierce.*" (emphasis added). App. p. 5. In Count III, the Pierces alleged that the Church defamed David Pierce by "falsely accusing him of incompetence in the performance of his ministerial duties and *inability to function effectively as a minister.*" (emphasis added). App. p. 8. In Count IV, the Pierces alleged that the Church "intended to cause, or recklessly disregarded the probability of causing emotional distress to Plaintiffs *by terminating the employment of Plaintiff, David Pierce.*" (emphasis added). App. p. 10. In Count V, the Pierces alleged that the Church's failure to disclose to David Pierce material facts *"about the operation of its working policies"* and Pierce's *"rights under those policies,"* "amounted to *false representations of the employment and termination status of Plaintiff, David Pierce.*" (emphasis added). App. p. 12. Finally, in Count VI, the Pierces alleged that the Church wrongfully induced Pierce, to

"sign a release purporting to exonerate Defendant from liability for its wrongdoing *in the termination of David Pierce.*" (emphasis added). App. p. 13.

In *Lewis v. Seventh-day Adventists Lake Region Conference, supra,* the plaintiff's complaint contained claims for breach of contract, as well as derivative claims for promissory estoppel, intentional infliction of emotional distress, and loss of consortium. The Sixth Circuit treated each of these derivative claims as subsidiary and dependent upon the plaintiff's principal claim for breach of contract. Thus, the Sixth Circuit held that the trial court properly declined to exercise jurisdiction over the plaintiff's *entire* complaint.

Similarly, in *Hutchison v. Thomas,* 789 F.2d 392, 395-96 (6th Cir.), *cert. denied,* 479 U.S. 885, 107 S. Ct. 277, 93 L. Ed. 2d 253 (1986), the Sixth Circuit dismissed various claims, including a defamation claim, against a church, holding that the resolution of the disputes would require inquiry into ecclesiastical decisions in violation of the Free Exercise Clause of the First Amendment.

A number of other courts have also considered the constitutional propriety of resolving the same types of derivative claims against religious organizations which have been asserted by the Plaintiffs in this case. These courts have consistently determined that they lack jurisdiction to resolve those disputes and derivative claims. *See, e.g., Natal v. Christian & Missionary Alliance,* 1988 WL 159169 at 4, 8 (D.P.R. Dec. 15, 1988) (court dismissed a wrongful termination claim because termination decisions are exclusively within purview of the church and would have dismissed a libel and slander claim had such

a claim been properly asserted because *"[a]ny such claim* would arise and would be inextricably intertwined with the . . . [plaintiff's] alleged dissatisfaction with defendant's interpretation and application of the manual of the church" (emphasis added)), *aff'd*, 878 F.2d 1575, 1577-78 (1st Cir. 1989); *Higgins v. Maher*, 258 Cal. Rptr. 757, 759-60 (Cal. Ct. App. 1989) (affirming a California state trial court's dismissal for want of subject matter jurisdiction of a priest's claims for defamation, invasion of privacy, breach of the covenant of good faith and fair dealing, intentional infliction of emotional distress, and wrongful termination, because the state court was precluded "from meddling in the ecclesiastical authority of the church"), *cert. denied*, 493 U.S. 1080 (1990).

In *Farley v. Wisconsin Evangelical Lutheran Synod*, 821 F. Supp. 1286 (D. Minn. 1993), a federal district court granted summary judgment for a church on the plaintiff's defamation claim. The plaintiff claimed that the church made defamatory statements about him during its attempts to remove him from his position as a pastor. As the court reasoned:

> Resolution of Farley's defamation claim would require the court *to review [the church's] bases for terminating him, an ecclesiastical concern, and the veracity of [the church's] statements*. The court determines that such an inquiry would implicate the concerns expressed in the First Amendment. Based on that determination, the court concludes that it has no jurisdiction in this matter.

(emphasis added). *Id.* at 1290.

In the instant case, each of the Pierces' claims under Counts II through VI are, like their claims under Count I, inextricably intertwined in David Pierce's dissatisfaction with the Church's interpretation and application of the procedures used in his termination. Accordingly, they all reside in the forbidden territory which the First Amendment prohibits civil courts from entering.

B. The Iowa Supreme Court Correctly Affirmed Summary Judgment for the Church Under the Law, Facts, and Circumstances of this Case.

In the Iowa district court's ruling granting summary judgment for the Church, and in the Iowa Supreme Court's decision affirming summary judgment for the Church, both courts carefully considered, and rejected, the Pierces' contention that this is not a case about wrongful termination, but only about an alleged breach of a secular unilateral employment contract.

In their instant petition for writ of certiorari, the Pierces continue to attempt to characterize this lawsuit as nothing more than a simple secular claim that the Church breached its alleged promise to periodically evaluate David Pierce's performance. The Pierces argue essentially that this lawsuit could therefore have been resolved merely by establishing that David Pierce's personnel file did not contain any documentation of the Church's perceived deficiencies in Pierce's performance.

This is not what the Pierces alleged in their First Amended and Substituted Petition, however. App. pp. 1-17. There they specifically alleged, in Count II, for example, that the Church did not exercise reasonable care

"in the process of making its decision whether to continue or terminate the employment of Plaintiff, David Pierce." (emphasis added). App. p. 5. In Count III, the Pierces further alleged that the Church defamed Pierce by *"falsely accusing him of incompetence in the performance of his ministerial duties and inability to function effectively as a minister."* App. p. 8.

As a result of the Pierces' own pleadings, the issue of David Pierce's fitness and qualifications as a minister of the gospel are inextricably intertwined with the resolution of all of the Pierces' claims, including their claims for breach of an alleged unilateral employment contract. Even with regard to those claims, the Pierces alleged in their Brief to the Iowa Supreme Court that among the policies which they claimed the Church violated by failing to place "documentation" in Pierce's personnel file was the policy that "effectiveness of all employees is to be reviewed periodically," and the policy which specifies that a "licensed minister's leadership progress, professional development and *spiritual growth* will be reviewed annually by the Conference." (emphasis added). App. p. 22. *Any* inquiry into a minister's *"spiritual growth,"* including the means or method adopted by the Church to evaluate that "growth," however, is obviously and necessarily an inherently ecclesiastical concern.

The Church never offered any summary judgment evidence disputing the fact that Plaintiff David Pierce's personnel file did not contain documentation regarding evaluations.

As the trial court correctly observed, the term "wrongfully terminated" appears twice in Plaintiffs' Petition; the allegation that Plaintiff David Pierce "has been deprived of gainful employment" appears three times in Plaintiffs' Petition; and the phrase "wrongdoing in connection with his termination" appears four times in Plaintiffs' Petition. App. pp. 1-17. A careful examination of Plaintiffs' First Amended and Substituted Petition ("Plaintiffs' Petition"), reveals, in fact, that each and every one of the Pierces' six causes of action all arise directly from, and are inextricably intertwined with David Pierce's termination from his employment as a minister with the Seventh-day Adventist Church.

Because it is undisputed that the gist of this lawsuit involved a complaint over the termination of the employment relationship between a church and its minister, ecclesiastical concerns are *necessarily* implicated. As the Sixth Circuit Court of Appeals has held:

> We look to the substance and effect of plaintiffs' complaint, not its emblemata. Howsoever a suit may be labelled, once a court is called upon to probe into a religious body's selection and retention of clergymen, the First Amendment is implicated. We agree entirely with the Fifth Circuit that:
>
> The relationship between an organized church and its ministers is its lifeblood. The minister is the chief instrument by which the church seeks to fulfill its purpose. Matters touching this relationship *must necessarily be recognized as of prime ecclesiastical concern.* (emphasis added).

> *McClure v. Salvation Army*, 460 F.2d 553, 558-59 (5th Cir.), *cert. denied*, 409 U.S. 896, 93 S. Ct. 132, 34 L. Ed. 2d 153 (1972).

Natal v. Christian & Missionary Alliance, 878 F.2d 1575 at 1577 (1st Cir. 1989).

As noted by the Eighth Circuit, the minister plays a particularly sensitive role in any church organization. *Kaufmann v. Sheehan*, 707 F.2d 355 at 359 (8th Cir. 1983). Through the minister the church is able to accomplish its purpose of conveying its religious message to its members. Because of the significant role of ministers and priests, the relationship between the church and its clergy "*must necessarily be recognized as applying ecclesiastical concern.*" (emphasis added). *Hafner v. Lutheran Church-Missouri Synod*, 616 F. Supp. 735 at 739 (D. Ind. 1985). The freedom to select clergy is constitutionally protected against state interference as being part of the free exercise of religion. *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116, 73 S. Ct. 143, 154, 97 L. Ed. 120 (1952). A church's existence may well depend upon who it selects to preach its doctrine. *Rayburn v. General Conference of Seventh-day Adventists*, 772 F.2d 1164, 1168 (4th Cir. 1985), *cert. denied*, 478 U.S. 1020, 106 S. Ct. 3333, 92 L. Ed. 2d 739.

The Church never contended, as the Pierces claim, that simply because it is a church, it is above the law. Indeed, the Church readily concedes that if this lawsuit had been brought by a former employee of the Church who had not been employed as a minister and whose duties had not been primarily of an ecclesiastical and religious nature, this suit would not be barred by the First Amendment. *See Geary v. Visitation of the Blessed Virgin Mary Parish Sch.*, 1993 WL 390433 (3d Cir. 1993) (Age

Discrimination in Employment Act held applicable to religious school's lay faculty); *Dole v. Shenandoah Baptist Church*, 899 F.2d 1389 (4th Cir.), *cert. denied*, ___U.S.___, 111 S. Ct. 131, 112 L. Ed. 2d 99 (1990); *E.E.O.C. v. Fremont Christian Sch.*, 781 F.2d 1362 (9th Cir. 1986); *Volunteers of Am.-Minn.-Bar None Boys Ranch v. N.L.R.B.*, 752 F.2d 345 (8th Cir.), *cert. denied*, 472 U.S. 1028, 105 S. Ct. 3502, 87 L. Ed. 2d 633 (1985); *E.E.O.C. v. Pacific Press Publishing Ass'n*, 676 F.2d 1272 (9th Cir. 1982) (editorial secretary at church-affiliated publishing house); *E.E.O.C. v. Southwestern Baptist Theological Seminary*, 651 F.2d 277 (5th Cir. 1981), *cert. denied*, 456 U.S. 905, 102 S. Ct. 1749, 72 L. Ed. 2d 161 (1982) (Title VII of the Civil Rights Act of 1964 held applicable to administrative and support staff at a seminary); *E.E.O.C. v. Mississippi College*, 626 F.2d 477 (5th Cir. 1980), *cert. denied*, 453 U.S. 912, 101 S. Ct. 3143, 69 L. Ed. 2d 994 (1981) (Title VII could be applied to promotion of a secular teacher in religious educational institution).

The central and undisputed fact in this case, however, which distinguishes this case from those cited above, is that David Pierce was employed as a minister of the Seventh-day Adventist Church, and that this lawsuit is directly challenging Pierce's termination from his employment in that position. Accordingly, the Iowa Supreme Court correctly determined that the Pierces' claims are all barred by the First Amendment as a matter of law. *Rayburn v. General Conference of Seventh-day Adventists*, 772 F.2d 1164 (4th Cir. 1985), *cert. denied*, 478 U.S. 1020, 106 S. Ct. 3333, 92 L. Ed. 2d 739 (1986).

C. The *Drevlow* and *Minker* Decisions Are Readily Distinguishable, Do Not Constitute a Conflict Among the Circuit Courts, and Do Not Preclude This Court From Denying the Writ.

In *Drevlow v. Lutheran Church, Missouri Synod*, 991 F.2d 468 (8th Cir. 1993), a minister and his wife alleged that a church violated its own bylaws by removing the minister's name from a list of eligible ministers. In a second portion of their complaint, the plaintiffs alleged that the church had circulated a personal information file which had contained the false statement that a prior marriage of the minister's spouse had ended in divorce. The Eighth Circuit held that the First Amendment barred that portion of the plaintiffs' complaint pertaining to the minister's suspension. However, the Eighth Circuit concluded that the district court did have jurisdiction to hear the second portion of the complaint because it did not involve an inquiry into the church's "bylaws or religious beliefs," and because the plaintiff "Drevlow's *fitness as a minister*" was "not in dispute." (emphasis added). *Drevlow*, 991 F.2d at 471-472.

In *Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354 (D.C. Cir. 1990), a minister brought suit against his church alleging age discrimination and breach of contract. The D.C. Circuit held that the minister's age discrimination claims were barred by the First Amendment, as well as his breach of contract claims which alleged that the church's Book of Discipline had been violated. The court reasoned that the "interpretation of the . . . provisions of the Book of Discipline is *inherently an ecclesiastical matter*." (emphasis added). The court held, however, that the minister's cause of action

for breach of an oral employment contract was not barred by the First Amendment because this narrow claim involved an allegation of a simple oral promise made to the plaintiff that he would be provided with a congregation more suited to his training and skills in exchange for his continued work at the church.

The Church respectfully submits that Petitioners' claims in the instant case are most similar to the claims in *Minker* and *Drevlow* which were held to be barred by the First Amendment. Although Petitioners appear to argue that they are merely asserting a simple secular claim that the Church breached its alleged promise to periodically evaluate David Pierce's performance, as argued above, this is not what the Pierces alleged in their First Amended and Substituted Petition. There, the Pierces, rather, made numerous and repeated sweeping allegations that the Church violated its "working policies, guidelines and procedures" by terminating Plaintiff David Pierce. In order to determine whether or not those guidelines, policies and procedures have been violated, the Iowa civil court would necessarily have had to interpret the Church's policies and procedures governing the criteria for the employment of its ministers, which is an inherently ecclesiastical matter.

D. The Banfield Article Does Not Preclude this Court From Denying the Writ.

In their Petition, Petitioners continue to rely heavily on an article from the *Adventist Review* which includes a discussion by a Warren Banfield of the church's apparent employment policies. Petitioners essentially contend that

as a result of this article, the Church has waived its right to argue that this case is barred by the First Amendment.

As the Church argued to the Iowa Supreme Court, the Banfield article did not constitute competent summary judgment evidence because it was not properly authenticated as a business record, and was merely attached as an exhibit to Plaintiffs' Resistance to Defendant's Motion for Summary Judgment with no foundation whatsoever.[1] Moreover, the Pierces provided no proof that the Banfield article actually reflected the official position of the Church in this case, nor was there any indication that the comments by Banfield were intended to apply to *ministerial* employees, or to other employees of the Church.

Even if the Banfield article *did* constitute competent summary judgment evidence of the Church's policies applicable to its ministerial employees, it would still not constitute a waiver of the Church's contention that this lawsuit is barred by the First Amendment. As the Georgia Court of Appeals observed in *McDonnell v. Episcopal*

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[1] The Banfield article would also have been inadmissible under Rule 56(e) of the Federal Rules of Civil Procedure, which, according to Petitioners in their Brief to the Iowa Supreme Court, the Iowa courts look to in interpreting Iowa R. Civ. P. 237. Fed. R. Civ. P. 56(e) permits a summary judgment motion to be opposed by any of the kinds of evidentiary materials listed in Fed. R. Civ. P. 56(c). Fed. R. Civ. P. 56(c), in turn, lists *only* affidavits, pleadings, depositions, answers to interrogatories and admissions on file, as proper summary judgment evidence. Because the Banfield article was not offered through Affidavit testimony, or by any of the other means allowed by Fed. R. Civ. P. 56, it constitutes inadmissible summary judgment evidence under the Federal Rules and must be disregarded.

Diocese of Georgia, 381 S.E.2d 126 at 127 (Ga. App. 1989), "[t]he civil court cannot take jurisdiction of an ecclesiastical issue *even if the parties present it for resolution*, because the First Amendment prohibits such action by the civil judicial system." (emphasis added).

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

JAMES H. KIZZIAR, JR.
Counsel of Record
JOHN A. FERGUSON, JR.
MATTHEWS & BRANSCOMB, P.C.
106 S. St. Mary's Street
San Antonio, Texas 78205
(210) 226-4211
Counsel for Respondent

APPENDIX A

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

DAVID PIERCE, Individually, and as Next Friend of MELANIE PIERCE, JASON PIERCE, and NATHANIEL PIERCE, and MARY PIERCE, Individually, Plaintiffs, vs. IOWA-MISSOURI CONFERENCE OF SEVENTH-DAY ADVENTISTS, Defendant,	LAW NO. CL 095-56065 FIRST AMENDED AND SUBSTITUTED PETITION (Filed May 4, 1993)

COME NOW the Plaintiffs, and for their cause of action against the Defendant, state to the Court as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiffs are residents of Lincoln, Lancaster County, Nebraska.

2. Defendant is a corporate religious entity, having its principal place of business in West Des Moines, Polk County, Iowa.

3. Defendant is a subdivision of the Mid-America Union Conference and the North American Division of the Seventh-day Adventist Church, which organizations

formulate policies, guidelines and procedures to be followed in employment practices of the Defendant.

4. Plaintiffs, David Pierce and Mary Pierce, at all times material, have been husband and wife.

5. Plaintiffs, Melanie Pierce, Jason Pierce, and Nathaniel Pierce, at all times material, have been the children of Plaintiffs David Pierce and Mary Pierce.

6. This Court has jurisdiction of this case in that the Defendant is a resident of Iowa, and the acts and omissions complained of herein, and the resulting damages, took place in West Des Moines, Iowa.

7. Venue is properly laid in this judicial district pursuant to Iowa Code § 616.18 (1991).

8. The amount in controversy in this action exceeds the maximum jurisdictional amount of Small Claims Court.

OPERATIVE FACTS

9. Plaintiff, David Pierce, was employed by Defendant, Iowa-Missouri Conference of Seventh-day Adventists, from June, 1985 through March 31, 1990, as an intern minister, serving congregations in the State of Missouri.

10. On March 31, 1990, the Defendant terminated Plaintiff, David Pierce, from his employment with Defendant.

11. Defendant has, and operates on the basis of, certain written working policies which govern the bases

for which employees may be terminated, and the procedures to be followed in terminating employees, including policies, guidelines and procedures formulated by the Mid-America Union Conference and the North American Division of Seventh-day Adventists.

COUNT I

BREACH OF UNILATERAL CONTRACT OF EMPLOYMENT

12. Plaintiffs hereby incorporate by this reference paragraphs 1 through 11 of this Petition as if fully set forth herein.

13. Defendant and its parent organizations published and made known to Plaintiff, David Pierce, the content of certain working policies, guidelines, and procedures governing the termination of employees.

14. Defendant's working policies, guidelines, and procedures constituted an employment contract giving rise to an offer of continued employment and promised that employment would not be terminated by any other procedure than that outlined in the working policies, guidelines, and procedures.

15. During and after the times when Defendant communicated its working policies, guidelines, and procedures to Plaintiff, David Pierce, Plaintiff forsook other employment alternatives and remained in the Defendant's employ, so as to constitute an acceptance of the provisions found in Defendant's working policies, guidelines, and procedures.

16. Plaintiff, David Pierce, gave consideration for defendant's offer of continued employment by giving service to Defendant, and by obeying, to the best of his knowledge and ability, the rules of employment, and foregoing other employment opportunities, all in reasonable reliance on Defendant's offer.

17. Defendant breached its unilateral employment contract with Plaintiff, David Pierce, by terminating him in violation of Defendant's and Defendant's parent organizations' own published and communicated working policies, guidelines, and procedures.

18. Having wrongfully terminated David Pierce in violation of its own working policies, guidelines, and procedures, Defendant sought to escape the consequences of its wrongdoing by withholding from David Pierce a termination settlement due him under church policy unless and until he agreed to sign a release exonerating Defendant from all liability for its wrongdoing in connection with his termination.

19. As a result of Defendant's breach of its unilateral contract of employment, Plaintiff, David Pierce, has been deprived of gainful employment for which he was qualified, and which he was capably performing. He has lost wages and will continue to lose wages. He has been stigmatized as an ineffective minister and has, therefore, been damaged in his ability to obtain comparable work for which he is qualified, and fully capable of performing. In addition, Plaintiff, David Pierce, has suffered severe mental and emotional distress and anguish, embarrassment and humiliation, has suffered economic loss, difficulty in meeting financial obligations, additional

expenses related to job seeking, and has incurred additional expenses required as a result of physical and emotional stress reactions proximately caused by the conduct of the Defendant.

20. Plaintiffs, Mary Pierce, Melanie Piece, Jason Pierce, and Nathaniel Pierce, have suffered the loss of Plaintiff, David Pierce's, consortium, support, services, love, companionship, comfort, and affection, and have incurred expenses related thereto, all proximately caused by the conduct of Defendant.

WHEREFORE, Plaintiffs demand judgment against Defendant, Iowa-Missouri Conference of Seventh-day Adventists, for compensatory and consequential damages in fair and reasonable monetary amounts to be determined by the trier of fact, along with interest as provided by law, and the costs of this action.

COUNT II

NEGLIGENCE/BREACH OF ASSUMED DUTY

21. Plaintiffs hereby incorporate by this reference paragraphs 1 through 11 of this Petition as if fully set forth herein.

22. Defendant undertook to apply its own working policies, guidelines, and procedures in the process of making its decision whether to continue or terminate the employment of Plaintiff, David Pierce.

23. Defendant knew, or should have recognized that such an investigation and application of appropriate policies was necessary for the protection of Plaintiff in terms of retaining his position with Defendant.

24. In applying appropriate policy guidelines, Defendant failed to exercise reasonable care in the application of those guidelines.

25. The failure of Defendant to exercise reasonable care increased the risk of harm to Plaintiffs of the loss of Plaintiff, David Pierce's, job.

26. Plaintiffs were injured because of the reliance of Plaintiff, David Pierce, on the undertaking of Defendant, and because of Defendant's reliance upon the undertaking of its agents in applying the appropriate [sic]

27. The negligent performance of the undertakings of Defendant was a proximate cause of damage to Plaintiffs, and Plaintiffs intend to rely, in this Count, upon the doctrine of assumed duty, as outlined in the Restatement (Second) of Torts, §§ 323 and 324A.

28. Having wrongfully terminated David Pierce in violation of its own working policies, guidelines, and procedures, Defendant sought to escape the consequences of its wrongdoing by withholding from David Pierce a termination settlement due him under church policy unless and until he agreed to sign a release exonerating Defendant from all liability for its wrongdoing in connection with his termination.

29. As a result of Defendant's negligent breach of its assumed duties, Plaintiff, David Pierce, has been deprived of gainful employment for which he was qualified, and which he was capably performing. He has lost wages and will continue to lose wages. He has been stigmatized as an ineffective minister and has, therefore, been damaged in his ability to obtain comparable work

for which he is qualified, and fully capable of performing. In addition, Plaintiff, David Pierce, has suffered severe mental and emotional distress and anguish, embarrassment and humiliation, has suffered economic loss, difficulty in meeting financial obligations, additional expenses related to job seeking, and has incurred additional expenses required as a result of physical and emotional stress reactions proximately caused by the conduct of Defendant.

30. Plaintiffs, Mary Pierce, Melanie Pierce, Jason Pierce, and Nathaniel Pierce, have suffered the loss of Plaintiff, David Pierce's, consortium, support, services, love, companionship, comfort, and affection, and have incurred expenses related thereto, all proximately caused by the conduct of Defendant.

WHEREFORE, Plaintiffs demand judgment against Defendant, Iowa-Missouri Conference of Seventh-day Adventists, for compensatory damages in a fair and reasonable monetary amount to be determined by the trier of fact, along with interest as provided by law, and the costs of this action.

COUNT III

DEFAMATION

31. Plaintiffs hereby incorporate by this reference paragraphs 1 through 11 of this Petition as if fully set forth herein.

32. Defendant, by means of notes, memoranda, reports to governing bodies of the Seventh-day Adventist

Church and its subdivisions, oral and/or written recommendations to potential employers, and other oral and written communications, has defamed Plaintiff, David Pierce, falsely accusing him of incompetence in the performance of his ministerial duties and inability to function effectively as a minister.

33. The words of Defendant's communications are libelous per se in that, on their face, they degrade Plaintiff, render him odious, subject him to public hatred, contempt, and ridicule, have tended to and indeed have injured him in his business or trade, have exposed him to contempt and the deprivation of the benefits of public confidence.

34. Defendant has caused these false and defamatory statements to be published to a variety of third parties.

35. The false and defamatory communications of Defendant were not privileged, or in the alternative, if they were subject to a privilege, the privilege was exceeded or abused in that the actions of Defendant went beyond the duty, if any, it had to report on the employment of Plaintiff, was done in a manner not justified by the occasion, and was continued after Defendant had full opportunity, information, and documentation, and knew, or should have known, that its defamatory statements were false and unjustified.

36. Damage to the Plaintiff's reputation may be implied by law from the per se nature of the defamatory statements made by Defendant regarding Plaintiff.

37. The false and defamatory communications of Defendant regarding Plaintiff were a proximate cause of damages to Plaintiff.

38. As a result of the defamatory communications of Defendant, Plaintiff, David Pierce, has been deprived of gainful employment for which he was qualified, and which he was capably performing. He has lost wages and will continue to lose wages. He has been stigmatized as an ineffective minister and has, therefore, been damaged in his ability to obtain comparable work for which he is qualified, and fully capable of performing. In addition, Plaintiff, David Pierce, has suffered severe mental and emotional distress and anguish, embarrassment and humiliation, has suffered economic loss, difficulty in meeting financial obligations, additional expenses related to job seeking, and has incurred additional expenses required as a result of physical and emotional stress reactions proximately caused by the conduct of Defendant.

39. Plaintiffs, Mary Pierce, Melanie Pierce, Jason Pierce, and Nathaniel Pierce, have suffered the loss of Plaintiff, David Pierce's, consortium, support, services, love, companionship, comfort, and affection, and have incurred expenses related thereto, all proximately caused by the conduct of Defendant.

WHEREFORE, Plaintiffs demand judgment against Defendant, Iowa-Missouri Conference of Seventh-day Adventists, for compensatory damages in a fair and reasonable monetary amount to be determined by the trier of fact, along with interest as provided by law, and the costs of this action.

COUNT IV

INTENTIONAL INFLICTION OF SEVERE EMOTIONAL DISTRESS

40. Plaintiffs hereby incorporate by this reference paragraphs 1 through 11 of this Petition as if fully set forth herein.

41. The conduct of Defendant, as outlined above, and as to be revealed in further discovery in this case, was outrageous, and beyond what can be tolerated by society.

42. Defendant intended to cause, or recklessly disregarded the probability of causing emotional distress to Plaintiffs by terminating the employment of Plaintiff, David Pierce.

43. Plaintiffs have suffered extreme or severe emotional distress as a result of the termination of Plaintiff, David Pierce.

44. The termination of the employment of Plaintiff, David Pierce, by Defendant is the actual and proximate cause of emotional distress suffered by Plaintiffs.

45. The intentional infliction of severe emotional distress by Defendant was a proximate causae [sic] of damage to Plaintiffs.

46. As a result of the intentional infliction of severe emotional distress by Defendant, Plaintiff, David Pierce, has been deprived of gainful employment for which he was qualified, and which he was capably performing. He has lost wages and will continue to lose wages. He has been stigmatized as an ineffective minister and has,

therefore, been damaged in his ability to obtain comparable work for which he is qualified, and fully capable of performing. In addition, Plaintiff, David Pierce, has suffered severe mental and emotional distress and anguish, embarrassment and humiliation, has suffered economic loss, difficulty in meeting financial obligations, additional expenses related to job seeking, and has incurred additional expenses required as a result of physical and emotional stress reactions proximately caused by the conduct of Defendant.

47. Plaintiffs, Mary Pierce, Melanie Pierce, Jason Pierce, and Nathaniel Pierce, have suffered the loss of Plaintiff, David Pierce's, consortium, support, services, love, companionship, comfort, and affection, and have incurred expenses related thereto, all proximately caused by the conduct of Defendant.

WHEREFORE, Plaintiffs demand judgment against Defendant, Iowa-Missouri Conference of Seventh-day Adventists, for compensatory damages in a fair and reasonable monetary amount to be determined by the trier of fact, along with interest as provided by law, and the costs of this action.

COUNT V

EQUITABLE FRAUD/CONSTRUCTIVE FRAUD

48. Plaintiffs hereby incorporate by this reference paragraphs 1 through 11 of this Petition as if fully set forth herein.

49. Defendant had superior knowledge of its own working policies and of their operation, as well as of the

rights of employees pursuant to those policies, and Plaintiff was only able to obtain such information by and through the assistance of Defendant.

50. Defendant established a confidential relationship with Plaintiff, David Pierce, by gaining Plaintiff's confidence in purporting to act and advise in Plaintiff's interest.

51. Defendant, therefore, had a duty to fully and accurately disclose all information regarding its employment policies and Plaintiff's rights under those policies.

52. Defendant represented to Plaintiff that the signing of a release exonerating Defendant from all liability for its wrongdoing was a necessary prerequisite to receiving a termination settlement due Plaintiff under Defendant's working policies.

53. Defendant failed to disclose to Plaintiff, David Pierce, certain material facts about the operation of its working policies, including, but not limited to, his right to receive a termination settlement based upon his number of years of service to Defendant and that Defendant had no right to demand from Plaintiff a release from liability for its wrongdoing in order to receive said termination settlement.

54. Defendant's representations, and its failure to disclose material facts, amounted to false representations of the employment and termination status of Plaintiff, David Pierce.

55. Plaintiff, David Pierce, relied on the representations of Defendant in signing the release presented to him.

56. The false representations of the Defendant were a proximate cause of David Pierce's signing the release presented to him, purporting to waive all of his legal rights to due process of law, access to the Courts, and redress for tortious and other unlawful activity by the Defendant against him.

WHEREFORE, Plaintiffs demand judgment against Defendant, Iowa-Missouri Conference of Seventh-day Adventists, for compensatory damages in a fair and reasonable monetary amount to be determined by the trier of fact, along with interest as provided by law, and the costs of this action, and Plaintiffs request an order from this Court declaring the release signed by David Pierce to be void and unenforceable because induced by the fraud of the Defendant.

COUNT VI

ECONOMIC DURESS

57. Plaintiffs hereby incorporate by this reference paragraphs 1 through 11 of this Petition as if fully set forth herein.

58. In an attempt to obtain a release from liability for its wrongdoing, Defendant used threats, intimidation, and economic coercion beyond the legal bounds of its rights in inducing Plaintiff, David Pierce, to sign a release purporting to exonerate Defendant from liability for its wrongdoing in the termination of David Pierce.

59. The threats, intimidation, and economic coercion of Defendant destroyed the free agency of Plaintiff,

David Pierce, and caused him to do what he would not otherwise do, or was not legally bound to do.

60. Because of the superior position and strength of Defendant, Plaintiff had no means of protection against the economic coercion, threats, and intimidation of Defendant.

61. Defendant at all times had the power to injure the Plaintiff by making good on its threats to withhold from Plaintiff a termination settlement which was his right and due under Defendant's own working policies.

62. The cooperation of Plaintiff with Defendant's action was done because of fear of injury to his economic welfare and his family.

63. Defendant, therefore, has no right to benefit from its threats, intimidation, and economic coercion by forcing Plaintiff to waive his legal rights of redress against Defendant for Defendant's wrongdoing.

64. The actions of Defendant were a proximate cause of David Pierce's signing the release presented to him, purporting to waive all of his legal rights to due process of law, access to the Courts, and redress for tortious and other unlawful activity by the Defendant against him.

WHEREFORE, Plaintiffs demand judgment against Defendant, Iowa-Missouri Conference of Seventh-day Adventists, for compensatory damages in a fair and reasonable monetary amount to be determined by the trier of fact, along with interest as provided by law, and the costs of this action, and Plaintiffs request an order from this Court declaring the release signed by David Pierce to be

void and unenforceable because induced by the fraud of the Defendant.

COUNT VII
PUNITIVE DAMAGES

65. Plaintiffs hereby incorporate by this reference paragraphs 1 through 64 of this Petition as if fully set forth herein.

66. Defendant's actions in breaching its unilateral contract of employment, as described above, were taken in bad faith, and constituted, individually and in the aggregate, a breach by Defendant of both its own published working policies, guidelines, and procedures, and of the implied covenant of good faith and fair dealing recognized by law within the employment arrangement between Plaintiff and Defendant.

67. The breach of Defendant's unilateral contract of employment was willful and wanton, and done in malice, or in reckless disregard of the rights of Plaintiffs, entitling Plaintiffs to exemplary or punitive damages.

68. The conduct of Defendant in breaching its unilateral contract of employment constituted a separate unlawful or tortious act, apart from the breach of the contract, entitling Plaintiffs to exemplary or punitive damages.

69. The negligent breach of Defendant's assumed duties was willful and wanton, and done in malice, or in reckless disregard of the rights of Plaintiffs, entitling Plaintiffs to exemplary or punitive damages.

70. The defamatory communications of Defendant were willful and wanton, and made in malice, or in reckless disregard of the rights of Plaintiffs, entitling Plaintiffs to exemplary or punitive damages.

71. The intentional infliction of severe emotional distress by Defendant was willful and wanton, and made in malice, or in reckless disregard of the rights of Plaintiffs, entitling Plaintiffs to exemplary or punitive damages.

72. The conduct of the Defendant in making false representations to David Pierce to induce him to sign a release from liability was willful and wanton, and done in malice, or in reckless disregard of the rights of Plaintiffs, and was done to fraudulently cover up and to escape the consequences of Defendant's wrongful conduct in terminating Plaintiff, David Pierce, entitling Plaintiffs to exemplary or punitive damages.

73. The conduct of the Defendant in using economic duress against David Pierce to induce him to sign a release from liability was willful and wanton, and done in malice, or in reckless disregard of the rights of Plaintiffs, and was done to fraudulently cover up and to escape the consequences of Defendant's wrongful conduct in terminating Plaintiff, David Pierce, entitling Plaintiffs to exemplary or punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendant, Iowa-Missouri Conference of Seventh-day Adventists, for punitive damages in a fair and reasonable monetary amount to be determined by the trier of fact, along with interest as provided by law, and the costs of this action, and Plaintiffs request an order from this Court

declaring the release signed by David Pierce to be void and unenforceable because induced by the fraud of the Defendant.

LaMARCA & LANDRY, P.C.

By /s/ Robert K. DuPuy
Robert K. DuPuy PK0008928

1300 50th Street
West Des Moines, Iowa 50266
(515) 225-2600

ATTORNEYS FOR PLAINTIFFS

APPENDIX B

AFFIDAVIT OF W.D. WAMPLER IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

I, William D. Wampler, after having been duly sworn, do state the following:

1. My name is William D. Wampler and I am employed as President of the Iowa-Missouri Conference of Seventh-day Adventists (hereinafter "Iowa-Missouri Conference"), 1005 Grand Avenue, West Des Moines, Iowa 50265. I have been employed as President of the Iowa-Missouri Conference since 1981. On the basis of my position as President of the Iowa-Missouri Conference, I have personal knowledge of the following facts:

2. The Seventh-day Adventist Church is a worldwide ecclesiastical corporation which has a representative form of church government organized on four constituent levels. The first level is the local church. The second level is the local conference which is a united organized body of local churches in a given geographic territory. The third level is the union conference, which is a united body of local conferences within a larger territory. The fourth level is the General Conference, which is the largest unit of the Church organization, and which embraces unions in all parts of the world. Divisions are sections of the General Conference, with administrative responsibility assigned to them in designated geographic areas. The North American Division includes all of the United States and Canada. The Iowa-Missouri Conference is the local conference which covers the States of Iowa and Missouri.

3. The policies and guidelines for the North American Division of the Seventh-day Adventist Church are set forth in the *Working Policy of the North American Division of the General Conference* (hereinafter "*Working Policy*"). (True and correct copies of various sections of the *Working Policy* which was in effect in 1989-1990 are attached as Exhibit "A.").

4. The Introduction to the 1989-1990 *Working Policy* provides that the *Working Policy* "is the authoritative voice of the Church in all matters pertaining to the work of the Seventh-day Adventist denomination in the North American Division."

5. Section B 05 10 of the 1989-1990 *Working Policy* provides that each Conference session is responsible for electing an Executive Committee of the Conference, which is vested with the delegated authority of all the churches within the Conference.

6. The Bylaws of the Iowa-Missouri Conference, which were in effect in 1989 and 1990, empower the Executive Committee to employ ministers. (A true and copy of those Bylaws are attached as Exhibit "B").

7. The Executive Committee of the Iowa-Missouri Conference ("Executive Committee") is made up of church lay members, as well as pastors. The Executive Committee also includes the Iowa-Missouri Conference Officers, which, in 1989 and 1990, consisted of myself as President, Walter Brown, as Secretary, and Tom Evans, as Treasurer.

8. On February 26, 1985, the Executive Committee voted to hire David Pierce as a ministerial intern upon his graduation from Union College in May 1985.

9. During his employment as a ministerial intern with the Iowa-Missouri Conference, David Pierce was assigned as a pastor, and as an assistant pastor, to various Seventh-day Adventist Churches in the State of Missouri.

10. The last churches to which David Pierce was assigned as a ministerial intern were the Oak Grove Seventh-day Adventist Church in Kansas City, Missouri, where he was pastor, and the Kansas City Central Seventh-day Adventist Church, where he was an assistant pastor.

11. On February 21, 1990, the Executive Committee voted not to continue the employment of David Pierce as a ministerial intern beyond March 31, 1990, because the Executive Committee felt that Pierce had failed to prove himself to be called to the ministry. In the opinion of the Executive Committee, Pierce had failed to show satisfactory and effective leadership progress and professional development in his work as an intern minister sufficient for him to continue to serve as a minister of the gospel.

12. On or about July 29, 1991, Walter Brown and I received a letter from Pierce dated July 25, 1991, in which he stated that he believed that his termination as an intern minister was due to the Executive Committee's perception that his ministry was failing. The Executive Committee did perceive that Pierce's ministry was failing, and that was, in fact, one of the primary reasons for his termination from employment. (A true and correct

copy of the letter I received from Pierce is attached as Exhibit "C").

13. Following his termination, David Pierce did not appeal the matter of his termination to any level of the Seventh-day Adventist Church hierarchy beyond the Executive Committee of the Iowa-Missouri Conference. The Executive Committee was the highest level of the church hierarchy to which the matter of his termination was carried.

14. I have read this Affidavit consisting of four (4) pages, including this page, and swear that I have personal knowledge of the statements made therein and that those statements are true and correct.

(Signature Affixed)
WILLIAM D. WAMPLER

Exhibit "A"

WORKING POLICY

North American Division

of the General Conference of

Seventh-day Adventists

1989-1990 Edition

Printed in U.S.A.

REVIEW AND HERALD PUBLISHING
ASSOCIATION
Washington, DC 20039-0555
Hagerstown, MD 21740

* * *

L 20 15 Annual Review – A licensed minister's leadership progress, professional development and spiritual growth will be reviewed annually by the conference.

* * *

Exhibit "B"

CONSTITUTION
OF THE
IOWA-MISSOURI CONFERENCE
OF SEVENTH-DAY ADVENTISTS

* * *

ARTICLE VII – EXECUTIVE COMMITTEE AND DUTIES

* * *

Section 2 – . . . . The executive committee shall. . . . employ . . . ministers, secretaries, treasurers, and other persons. . . .

* * *

Exhibit "C"

Pastor David L. Pierce
5318 Bancroft Avenue
Lincoln, NE 68506
402-486-3631

July 25, 1991

Dear Elder Wampler and Elder Brown:

When I joined your conference I joined it with deep determination to serve my God and church through ministry. I have for some time felt the calling of the Lord to serve Him as a pastor. . . .

* * *

Because of the depth of my desire to serve the church, as you love the church, you can imagine my pain at being terminated. . . .

* * *

I believe the following:

1. That my termination was due to your perception of a failing ministry. . . .

* * *

Sincerely,

(Signature Affixed)
Pastor David L. Pierce